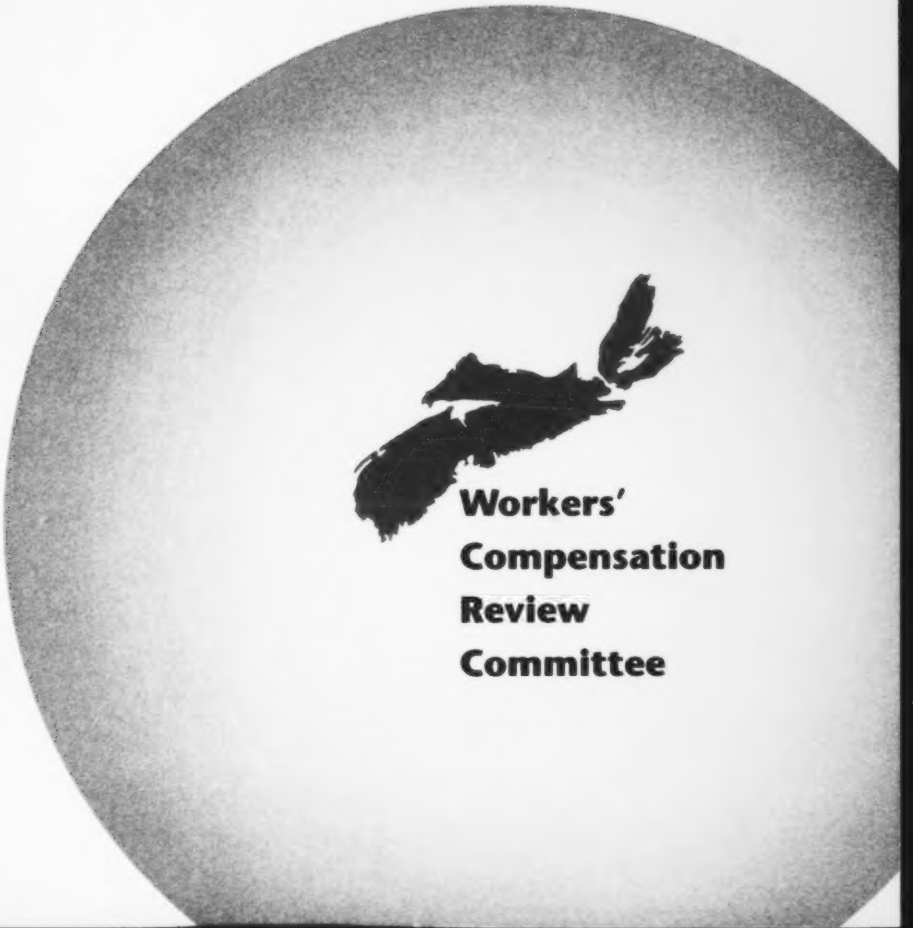
The Nova Scotia Workers' Compensation Program

A Focused Review



Workers'
Compensation
Review
Committee

March 2002

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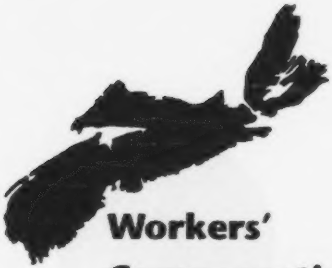

**Workers'
Compensation
Review
Committee**

March 2002

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Contents

1. Introduction **1**

2. Mandate and Review Process **5**

2.01 Review Scheduled by Statute 5
2.02 Focused, Not Comprehensive, Stakeholder Review 6
2.03 Review Method – Five-Step Approach 7

3. Crisis and Change in 1990s **11**

3.01 Workers' Compensation Program Characteristics 11
3.02 Evolution of the Nova Scotia Workers' Compensation Program 14
3.03 Court Interpretation Directs Major Change – March 23, 1990 17
3.04 Structural Change Was The First Legislated Response – 1992 20
3.05 Six-year Transition Period – March 23, 1990 to February 1, 1996 20
3.06 Judicial and Legislative Review – Substituted and Supplementary Benefits 22
3.07 Funding Crisis Disclosed in Early 1990s 25
3.08 New Statute, Appeals Tribunal and Appeal Backlog in 1995-96 31
3.09 New Earnings Loss Replacement – TERB, PIB, PMI and EERB 36
3.10 Chronic Pain – Action, Reaction and Ongoing Confusion 37
3.11 Workers Advisers Program Underwent Major Changes 44
3.12 Remarried Dependent Spouses 45
3.13 Compensation Costs Decrease – Other Costs Increase in 1990s 46
3.14 Persons Responsible for Workers' Compensation in the 1990s 53

4. Coverage – Scope and Nature **57**

4.01 The Goal – Universal, Compulsory Coverage 57
4.02 Population, Employment and Job Trends 60
4.03 Importance of Jobs and Changing Work Relationships 63
4.04 Excluded Unless Expressly Included Except if Expressly Excluded 64
4.05 Three-Worker Rule 66

4.06 Family Members at Home Should Not Be Treated Differently 68
4.07 Organizational Structure Should Not Be a Factor 69
4.08 Casual Employees and Working Owners 70
4.09 Optional Coverage – Self-employed and Others 71
4.10 Waiting Period 73
4.11 Chronic Pain 78

5. Revenue **87**
5.01 Sources of Income 87
5.02 Assessment Income 88
5.03 Self-Insured Employer Claims Costs and Administration Fees 99
5.04 Investment Income – A Success Story 100
5.05 Bad Debts, Reporting Penalties and Other Charges 104
5.06 Third Party Recoveries 106
5.07 Overpayment Recovery 107
5.08 Government Contributions and Guarantees 108

6. Prevention and Rehabilitation **109**
6.01 Prevention and Rehabilitation – Goals of Avoiding and Correcting 109
6.02 Prevention of Workplace Death, Injury and Illness 110
6.03 Role of Workers' Compensation Board 113
6.04 Experience Rated Assessments 119
6.04 Vocational Rehabilitation 126

7. Benefits **129**
7.01 Health Care and Special Allowances 130
7.02 Fatalities and Survivor Benefits 132
7.03 Annuities 132
7.04 Clinical Rating Schedule (CRS) Pensions 134
7.05 Adjustment and Indexing of Benefits 137
7.06 Amended Interim Earnings Loss (AIEL) 139
7.07 Supplementary Benefit 139
7.09 Payment and Commutation of Benefits 144
7.10 Maximum Insurable/Assessable Earnings 155
7.11 Calculating Earnings Replacement Benefits 162
7.12 Permanent Impairment Benefit (PIB) 168
7.13 Temporary Earnings Replacement Benefit (TERB) 169
7.14 Extended Earnings Replacement Benefit (EERB) 170
7.15 Maximum Compensation 173

8. Adjudication, Medical Opinions and Appeals 177
8.01 Primary Adjudication 177
8.02 Board and External Medical Opinions 185
8.03 Internal and External Levels of Appeal 193
8.04 Employer Access to Documents and Records 204
8.05 Time Limits for Submitting Evidence to WCAT 207
8.06 WCAT Power to Remit Matters or Give Directions to WCB 210
8.07 WCAT Power to Correct Errors and Reconsider Decisions 211
8.08 Percentage of Board Awards Changed 213

9. Accountability Frameworks 217
9.01 Broader, Program Perspective is Imperative 217
9.02 Three Distinct Accountability Frameworks 218
9.03 Autonomous Agencies – Not Co-ordinated Partners 222
9.04 Agency Roles, Relationships and Governance 223
9.05 Legislative Assembly 227
9.06 Executive Government 228
9.07 Minister of Environment and Labour 229
9.08 Workers Advisers Program (WAP) 232
9.09 Funding Injured Worker Associations 240
9.10 Workers Compensation Appeals Tribunal (WCAT) 242
9.11 Nova Scotia Court of Appeal 244
9.12 Ombudsman 244
9.13 Strategic Planning and Performance Measures 245
9.14 Administrative Costs 249
9.15 Regular, Scheduled, Comprehensive, Stakeholder Reviews 256
9.16 A Need for an Integrated Approach 256

10. Summary of Recommendations 261

Appendices 271
Appendix A – Terms of Reference 272
Appendix B – Member Profiles 279
Appendix C – Glossary of Terms 282
Appendix D – Key Reports, Legislation and Judicial Decisions in The Evolution of The Workers' Compensation Program 287
Appendix E – Workers' Compensation Review Committee Timeline and Public Meeting Schedule 289

Appendix F – Focus Group Sessions 293
Appendix G – Public Meeting Presenters and Written Submissions 295
Appendix H – Self Insured Revenue 301
Appendix I – Consolidated Master Data Table 302
Appendix J – Internal and External Appeals 342
Appendix K – WCB Summary of Major Benefit Changes Since 1917 358

Endnotes 365

Letter of Transmittal/Date of Report

March, 2002

Honourable David Morse
Minister of Environment and Labour
P.O. Box 697
Halifax, NS B3J 2T8

Dear Minister:

We have the honour to submit to you *The Nova Scotia Workers' Compensation Program – A Focused Review*.

The review, pursuant to section 161 of the *Workers' Compensation Act*, addresses the 28 review topics in the terms of reference, which accompany the Order in Council appointing the committee.

The committee thanks you for your support and encouragement during its work.

Respectfully submitted,

James E. Dorsey, Q.C., Chair
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Betty Jean Sutherland
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Acknowledgements

The Workers' Compensation Review Committee was appointed on March 29, 2001 under s. 161 of the *Workers' Compensation Act* to conduct a focused review of the workers' compensation program.

The three agency components of the system – the Workers' Compensation Board, the Workers Advisers Program and the Workers Compensation Appeals Tribunal – were most cooperative with the committee. They willingly provided responses to our many requests for data, background information and research information. They made themselves available to meet with us at our convenience.

The dedicated effort of the staff of these agencies in providing documents, data and other information contributed to a shared knowledge of workers' compensation issues in Nova Scotia. Much of the information was compiled over the summer months and posted to our website to provide public access to it. This was helpful to those preparing submissions and making presentations at our public meetings.

The committee traveled throughout Nova Scotia and met many people involved with, or interested in, the workers' compensation program. Their experiences, hopes, aspirations and suggestions for change have been a major source of inspiration for the committee. We are truly grateful to everyone who met with us and to those who made written submissions.

The committee was most ably supported and assisted by coordinator, Barb Jones Gordon, communications adviser, Steve Smith, and administrative assistants, Danielle Melanson and Matthew Young. Lia Thibault assisted with legal research and Scott Dickson was invaluable in keeping our website up to date. Margaret Issenman designed the report and Paul Cormier, of Communications Nova Scotia, oversaw its production. During the course of its deliberations, actuary Conrad Ferguson, a partner with Morneau Sobeco, assisted the committee by estimating the cost of various options. Joan Bisson and her staff in the Statistics Division of the Finance Department provided much of the data on employment and business trends within the 10-year period reviewed by the committee

The committee members thank their families, employers and colleagues for their understanding and support during repeated absences from home and work.

Executive Summary

The Workers' Compensation Review Committee, appointed in 2001, is a stakeholder committee with representatives of workers, injured workers and employers.

The committee's review process was structured to be inclusive, open and transparent. The committee met with hundreds of Nova Scotians; conducted focus-group sessions; and provided information on its website. It sought extensive information from the three main agencies responsible for delivering the workers' compensation program.

The committee's terms of reference identified 28 specific review topics or questions, which the committee grouped under six major themes that formed the basis of this review:

- Coverage
- Revenue
- Prevention and Rehabilitation
- Benefits
- Adjudication, Medical Opinions and Appeals
- Accountability Frameworks

The committee found the workers' compensation program to be overly complex, highly technical, excessively legal, rigidly compartmentalized and poorly coordinated.

History

To understand how the program evolved to its current state, the committee studied the many court decisions, royal commissions and review committees that have impacted the program over the decades.

The basic principles of Nova Scotia's program are still sound. A no-fault program of compensation avoids the high costs and long delays of litigation for employers and provides an on-going source of income for injured workers.

Over the years, however, for whatever reason, – incompetence, mismanagement, bungling, deceit, apathy, political interference, expediency or indifference – the program lost its way. This left the program seriously under-funded in the early 1990s. Then a 1990 court of appeal decision directed the board to move away from the administratively convenient "meat chart" system for determining disability and compensation to a more individualized earnings loss replacement system. The unfunded liability dominated discussions and proposed solutions.

Legislation and cost containment reduced the amount of compensation and created different entitlements based on the date an injury occurred. The resulting date-driven program is overwhelming in its complexity and has added an almost lottery-like element to the issue of benefit entitlement. Workers in different categories receive different benefits for the same injury.

Today, Nova Scotia employers pay the second highest rates among Canadian provinces but the benefits paid to injured workers are the country's second lowest.

Coverage

Nova Scotia has the lowest percentage (64.3%) of its work force covered by the public workers' compensation program. One of the most complex areas of the program is determining who is compulsorily covered.

Exemptions from coverage exist for smaller businesses that have employees who are no less likely than others to suffer work-related injuries and diseases. New and emerging industries, like those in the communications and technology field, face uncertainty about whether they have to participate in the program.

Employers who fund the system look for fairness in the application of coverage to new businesses and sole proprietors. Employer groups were unanimous in calling for full coverage for all businesses. The committee recommends that a phased approach be adopted to extending coverage to all workers and employers.

All industries should be included in the workers' compensation program, unless specifically excluded by cabinet through regulation. This simplifies the process, yet allows traditional exemptions for those involved in agriculture, professional sports and self-employed individuals.

Currently, there is a two-day waiting period that denies benefits to an injured worker for the first two days following an injury. This provision penalizes the worker for being injured, and creates administrative work for the board in calculating the deductions. The committee recommends that this provision be changed, so that employers pay the worker for the first day of the injury, and the following days would be paid by the board.

Potential costs for chronic pain claims dominated discussions in the 1990s. The board developed a functional restoration program to assist injured workers to manage the pain. No compensation is paid. The projected large numbers of chronic pain claims have not materialized. The committee found the impact of the functional restoration program to be minimal and questionable.

Revenue

Revenue collection is an area where the board has been progressive and successful. The committee found that the system the board uses to classify firms is fair and the manner of assigning firms to a particular industry class is appropriate. The challenge is to maintain currency in the classification system as new industries emerge.

Assessments are based on payrolls and maximum amounts are set for insurable payrolls, similar to the maximums set for CPP and Employment Insurance. This amount is a percentage of the average industrial wage in Nova Scotia.

The committee strongly recommends that this rate, which moves forward with wage growth in the province and keeps pace with inflation, should remain at 152 per cent of the average industrial wage. The average industrial wage, calculated by StatsCan, is an independent, measurable and defensible standard on which to calculate assessments and pay benefits to injured workers.

Investment returns have been strong in the past decade and this source of revenue has been a success story for the workers' compensation program.

The board's revenue performance has had a significant impact on its unfunded liability (the amount the board would be in debt if it closed down today). Reducing the unfunded liability became "Job One" for the board in the 1990s when it reached a high of $460.2 million. Substantial strides have been made. The board's unfunded liability is now approximately $300 million. The unfunded liability as a percentage of estimated future liabilities has declined from 64.1 per cent in 1994 to 31.7 per cent in 2000.

Concentration on reducing the unfunded liability has had a negative impact on the amount of money available for benefits and the lives of those dependent on the program. Benefits were not indexed for over five years. Even in periods of low inflation this erodes income. The committee recommends that over time, indexation of benefits should be increased from 50 per cent to 100% of the Consumer Price Index.

Prevention and Rehabilitation

An injury that does not occur requires no compensation.

The board's main effort in injury prevention have been to set up the experience rating program which charges higher assessment rates to employers who have more claims costs. Experience rating has not decreased claims or had an impact on the number of injuries and deaths in the province. A more coordinated strategy is needed to prevent and reduce workplace injuries.

Vocational rehabilitation and return-to-work assistance were raised frequently by injured workers who appeared before the committee. The recent emphasis on returning to work imposed by the wage-loss program has not been met with much understanding in the workplace.

The amounts expended by the board to help workers adjust to new employment have not increased over the past decade.

Benefits

The effort to contain costs in the workers' compensation program has created different classes of benefit entitlement dependant on the date of injury. Those who were injured prior to March 30, 1990 receive benefits based on the clinical rating schedule (CRS), often called the meat chart.

A supplementary benefits program was enacted in 1995 to provide assistance to those on CRS pensions, who, for whatever reason, could not return to work. It is a payment based on need, not on insurable or pre-injury earnings.

The committee recommends that the supplementary benefits program be amended to remove the monthly maximum payment and increase the income threshold for individuals to one-half of the average industrial wage for Nova Scotia. The average industrial wage will change from year to year and will help maintain the level of benefits received by CRS pensioners.

Commutation of benefits, which allows injured workers to take a lump sum payment in lieu of continuing benefits, is currently permitted only under limited circumstances. While no province offers commutation on demand, the committee recommends that the provisions be modified to allow for greater flexibility for injured workers. The board should create a presumption in favour of granting a request to commute when the worker and the worker's spouse have received independent financial advice regarding the long-term consequences of commutation.

The committee studied the calculation of benefits for seasonal workers or those with inconsistent salary histories but could not determine if the day-to-day practice of the board takes a balanced approach to their earnings loss calculation. The statute does not provide for a minimum weekly amount of compensation. The committee recommends that the board use a pre-injury period of time that is more certain and less discretionary. For workers with periods of no or unusually low earnings, a minimum of earnings, to be determined by policy should be used as deemed earnings for the worker.

Adjudication, Medical Opinions and Appeals

The program is highly dependent on medical evidence and opinion. The committee was unable to determine if the method for generating internal and external opinions was appropriate in all circumstances. The committee recommends that the board standardize the format for opinions and ensure that the questions addressed in conflicting opinions ask and answer the same questions based on the same information.

The committee is concerned that the board requests unnecessary reports and opinions from physicians confirming what should be evident. It recommends that the board set objective standards entitling workers to permanent impairment reassessments.

The concept of a medical review commission was once promoted as an effective and efficient addition to the investigation process. The committee found no support for setting up a medical review commission.

The committee found that the internal and external appeal systems were working well, and provided timely consistent decisions in an efficient manner. With the retirement of the backlog, it is an opportune time for the appeal process to be opened to decision-makers from disciplines other than law and to explore more pro-active case management and alternative approaches to dispute resolution.

Accountability

To improve the program's accountability and to produce measurable results, the committee recommends that a new, reconstituted board of directors be created to oversee the entire workers' compensation and occupational health and safety program. The board would have all the responsibilities of the current board of directors plus governing oversight of the Occupational Health and Safety Division, the Workers Advisers Program and the Workers Compensation Appeals Tribunal. While the various agencies would continue to reside within their home departments, there would be a single, coordinated strategic plan that establishes broad objectives for the entire health and safety and workers' compensation program.

The need to take the program to the "next level" and provide a greater degree of accountability to the stakeholders of the program is strongly shared by the all representatives on the committee.

Greater input and public consultation on all board policy is needed. The input of WAP, WCAT and OHS representatives as non-voting members of the board is valuable as they have a unique perspective on the clients of the program and how the program operates. Greater monitoring and reporting on compliance with the statute and regulations for each agency is recommended as a starting point to greater accountability.

The committee found that it is appropriate for the minister to take steps consistent with ministerial accountability for the program. These include proposing regulations; directing agency policy; expressing concerns strongly to the board of directors and the chief workers adviser; requesting a complete report and Auditor General audit, if necessary; and regularly evaluating the performance of the appointees.

The committee recognized that injured worker associations provide support to injured workers that is different than the legal representation which is provided by WAP. The committee recommends that funding regulations be developed to assist associations that have an established record of service, financial accountability and reporting to their members.

Other provinces have provisions in their statutes for automatic review processes to occur every three to five years. This provides an opportunity to assess how well changes are being implemented and the overall operation of the program. The committee recommends that there be a new review committee appointed every four years to review and report on the program.

1. Introduction

Nova Scotia's workplace health and safety and workers' compensation program is beginning to recover from the radical surgery of the 1990s. Profound changes were made because the integrity of the program had been drastically compromised.

Before the 1990s, for whatever reason – incompetence, mismanagement, bungling, deceit, apathy, expediency or indifference – there was a breach of the faith workers and employers placed in government and the members of the Workers' Compensation Board.

Because of that breach of faith, many injured workers and their families paid, and continue to pay, with reduced compensation benefits. Businesses paid, and continue to pay, through their annual assessments, for the administrative practices and suppressed assessment rates of the 1970s and 80s. Today, the Nova Scotia workers' compensation program has the second lowest benefits in Canada and the second highest average assessment rate. It no longer has the second highest percentage of unfunded liability.

In the 1990s many individuals worked tirelessly to create a health and safety and workers' compensation program that makes decisions based on principles, published policies and enunciated priorities. Each day, within the Workers' Compensation Board, the Workers Advisers Program, the Workers Compensation Appeals Tribunal and the Occupational Health and Safety Division of the Department of Environment and Labour, many individuals strive to improve workplace health and safety and to deliver workers' compensation. Their daily successes must not be forgotten when discussing the need for improvements.

Most persons engaged in the delivery of the health and safety and workers' compensation program want to look forward and to leave behind the legacy of the 1970s and 80s.

For others, the past breaches of faith, followed by the hard choices of the 1990s, have left scars and a pervading distrust. They are not willing to close the book and move on. They want redress for past wrongs. They want to open debate about compromise solutions enacted in the 1990s and the dashed expectations that accompanied those decisions. They do not trust the guardians of the program – ministers; deputy ministers; Workers' Compensation Board directors, executives and employees; public servants; and appeal adjudicators.

Since the 1980s, successive sessions of the legislative assembly and successive cabinets have diagnosed and doctored the program. Each decision was a response to a judicial or administrative tribunal decision, a recommendation of the Workers' Compensation Board, a report by an independent reviewer, such as the auditor general, or a political compromise such as a report of a select committee of the legislative assembly.

The legacy of all the "fixes" is endemic complications. The current health and safety and workers' compensation program is overly complex, highly technical, excessively legal, rigidly compartmentalized and poorly co-ordinated. If asked to start from scratch, no one would design or build the program as it exists today.

This review committee has sought to provide a focused review centred on 28 prescribed review topics. We have expansively interpreted the scope of many of these topics. Others have received limited attention commensurate with the attention they received in the submissions to the committee and their importance in the overall program.

This review committee's challenge has been to understand the complications of the program and the reasons it became the way it is. Our goal has been to point the way to an understandable program. To do this, it was necessary to create a context to respond to the 28 specific review topics that are the core of this review.

The persons who made submissions to the committee emphasized that the 28 review topics are a hodgepodge of philosophical, factual and technical questions. They saw the topics as a collection of questions that primarily reflect concerns of administrators from within the system. They do *not* reflect the concerns of the workers, employers, health care and other service providers who interact with the program. The review topics do not have a unifying theme. They are not the most important questions to ask and answer at this time. They overlook important areas, such as prevention of workplace injuries and occupational diseases. They do not address return-to-work issues. Only one touches on vocational rehabilitation.

The review committee has sought to keep faith with the persons who made written submissions and public presentations to us. We have broadly interpreted the effects of some review topics in order to make recommendations concerning some of the more poignant legacies of the change turmoil of the 1990s.

Fig 1 **Matrix of 28 Review Topic Subjects**[1]

Review Topics	WC Board	WC Appeals Tribunal	Workers Advisers Program	Minister	Governance	Prevention of Injury	Coverage	Funding	Compensation/Benefits	Chronic Pain	Regaining Health	Vocational Rehabilitation	Claims Administration	Administrative Costs	Performance Evaluation	Appeal Process	External Comparison	WCB Policy or Practice	Statutory Provisions
1	●	●	●	●											●				●
2	●		●	●	●														●
3	●							●							●			●	●
4	●							●										●	●
5	●					●		●							●			●	●
6	●						●											●	●
7	●								●									●	
8	●						●	●										●	●
9							●						●					●	●
10	●	●									●							●	
11	●	●									●		●					●	●
12							●	●	●									●	●
13	●								●		●		●					●	
14	●								●									●	●
15	●	●								●	●	●			●			●	
16	●								●				●					●	●
17	●	●	●	●	●			●					●	●				●	●
18	●	●	●	●	●								●					●	●
19			●														●		
20	●	●														●			●
21	●	●	●													●			●
22		●														●			●
23	●	●														●			●
24	●	●														●			●
25	●	●	●		●									●	●	●	●	●	
26	●	●													●	●	●		
27	●							●							●		●		
28	●	●	●											●	●		●		

2. Mandate and Review Process

2.01 Review Scheduled by Statute

Nova Scotia's workers' compensation program, created by statute in 1915, has been the subject of recurring review. This, however, is the first review to have been scheduled several years in advance by the legislative assembly.

In October 1994, the Minister of Labour proposed a scheduled, future review in a discussion paper as part of legislative proposals responding to a workers' compensation program "on the brink of collapse." The government considered there was "a clear need for government to step in and take decisive action to ensure that injured workers are treated fairly, employers have a system they can afford and that the system as a whole is sustainable." The minister proposed:

> Within three months of the end of the board's third complete fiscal year after coming into force of the proposed act, the government will appoint a review committee to review the entire workers' compensation system to ensure it is meeting the objectives of fairness, affordability and sustainability established by this government.[1]

This review committee was set in motion in 1995 with the passage of a new *Workers' Compensation Act*, which became effective in February 1996. The scheduled review was to be in 2000.

On June 22, 1998 the legislative assembly decided to create a nine-member, all-party select committee on the *Workers' Compensation Act*.[2] The select committee held public hearings across Nova Scotia between August 25 and September 23, 1998 and made its report on November 27, 1998.

The select committee considered it had conducted the public review scheduled for 2000. Its opinion was that "...the current review should substitute for the mandated review as the system now needs time to adjust to proposed changes. The next review should take place at the end of the seventh complete fiscal year which occurs in 2004-05."[3]

The statute was amended in 1999 and the appointment of this current review committee was postponed only one year to 2001, not to 2004. In 2000, one student of Nova Scotia workers' compensation wrote: "History suggests the debate will be as narrowly focused as the letter of the law will allow." She said there was a need to "broaden not narrow the scope of debate" and to use the review to "expand our understanding of the system and its performance."[1]

2.02 Focused, Not Comprehensive, Stakeholder Review

The Governor in Council (the cabinet) established the terms of reference for the review committee, under section 161 of the *Workers' Compensation Act*.

This review is not a comprehensive examination of the statute and regulations and their administration. The review committee's mandate is a focused examination of 28 review topics. Section 161, the complete terms of reference and the 28 review topics are in Appendix A.

The committee members were appointed from key stakeholder groups – employers, unions and injured worker groups – who understand the interests of their members and their current concerns. Biographical profiles of the committee members are in Appendix B.

The committee received submissions expressing concern about the limited focus of the 28 review topics and consulted with the Minister of Environment and Labour about the expected committee response to additional topics raised in the public meetings and written submissions. The minister said he would welcome additional recommendations or having topics identified for future review.

Paragraph L of the terms of reference states: "Where information is received on matters beyond the scope of the review, the committee will not address it in its Report, but at its discretion, may relay it to the Minister of Environment and Labour for information purposes." The committee has found that all the matters to be communicated to the minister fall within the scope of the review broadly interpreted. This report is the sole communication from the committee to the minister.

The immediate context for this review, in the 85th year of the program, is the many legislative, policy, judicial and administrative decisions of the 1990s. As forecast and expected, the major legislative changes in 1995 and 1999, following the review by the all-party select committee of the legislative assembly, received primary attention in public presentations and written submissions.

2.03 Review Method – Five-Step Approach

The review committee took a five-step approach to fulfilling its mandate.

1. Document research and historical review

This consisted of reviewing the statutes, regulations, board policies and annual reports of the board; reports of royal commissions and other past reviews; reports of other government agencies, notably the Auditor General's various reports and those done by special auditors of the WCB; judicial and tribunal decisions; past agency reports and internal studies; reports in other jurisdictions; and relevant literature.

In several other provinces, workers' compensation reviews have recently been completed or are ongoing. In Newfoundland, Prince Edward Island, Saskatchewan, Alberta and British Columbia, reviews are being conducted to ensure their programs remain up-to-date in a time of constant change. The committee is indebted to other provinces for sharing their information and experiences with us.

2. Data gathering and analysis

A broad range of data was collected. The Workers' Compensation Board, the Workers Advisers Program and the Workers Compensation Appeals Tribunal provided extensive information. Operational tours of each agency helped the committee and staff to understand the system's day-to-day operations.

The committee sought to obtain a 10-year (1991-2000) profile of all data to look for trends and changes. In some cases, changes made within the 10-year period, limited our ability to obtain a 10-year profile. In other cases, the data was not available. On a few topics, data was obtained for a longer period of time. Appendix I is a consolidated data table.

Data and background information were posted on the committee's website – www.gov.ns.ca/enla/wcrc – through which the committee communicated its mandate and schedule of activities and received submissions.

Unhappily, some data provided by the Workers' Compensation Board changed during the review. The changes confounded the committee and extended discussion. To the committee's chagrin, in one instance involving the number and profile of persons receiving supplementary benefits, the data changed significantly after the committee had paid for costing based on earlier data supplied by the board. The report contains the most recent data supplied by the agencies.

The committee met informally with the Minister of Environment and Labour, the Auditor General, the board of directors of the Workers' Compensation Board and the Chief Workers Adviser.

3. Focus group sessions

Focus group sessions were held early in the process to familiarize the committee with the specific concerns and interests of those most affected by the workers' compensation program. These June 2001 sessions were held in Sydney and Dartmouth with injured worker, employer and labour groups. The scope of the committee's review was frequently raised. Appendix F contains a list of the participants.

4. Public meetings

Public meetings were held at 12 locations across the province. The committee heard from persons affected by the occupational health and safety and workers' compensation program. A list of everyone who submitted information and appeared before the committee is in Appendix G.

The committee is most grateful to the many persons who met with us or made written presentations and voiced their opinions and concerns in a frank and forthright manner. Many organizations devoted time and resources to assist the committee by sharing the experiences and opinions of their members. We sincerely thank them.

5. Reconciliation and Costing

The committee held a focus group session with the three agencies – Workers' Compensation Board, Workers Compensation Appeals Tribunal and Workers Advisers Program – at the end of the consultation process. The discussion centred on inter-agency co-operation and co-ordination and the current state of the Accident Fund. Many of the committee's views were confirmed.

The committee asked the Workers' Compensation Board to estimate the cost of possible recommendations. We engaged an independent actuary to review and report on the board's costing estimates before making the final responses and recommendations in this report.

3. Crisis and Change in 1990s

3.01 Workers' Compensation Program Characteristics

Our economy is based on the activities of people – workers, employers and their families. All work involves some risk of injury or illness. Some work is inherently high risk. All risks can be identified, managed and minimized.[1]

Workplace accidents and occupational injury and illness hurt individuals and their families and communities. Workers need protection from injury and illness. They, and their families, need money to live on. They need support so they can recover and return to work.

Most Nova Scotia families depend on wages from work for their income and livelihood. Security of income in the event of loss of the ability to work is a basic human need. There is a social need to have some mechanism to protect persons against the consequences of not being able to earn a living.

Workers, employers, their families and communities depend upon government to support, oversee and secure the continuing integrity of the provincial occupational health and safety and workers' compensation program.

Legislated programs of employment insurance, health care, social assistance and public pension plans provide a measure of protection against the possibility of being unable to work to earn a living.

Workers' compensation was the first of these legislated programs. The need for the protection it provides is as pressing and enduring today as it was in 1915, when Nova Scotia became the second province to legislate a workers' compensation program administered by an independent administrative board.

All workers share the fear and insecurity of being unable to work because of injury or illness. The workers' compensation program seeks to ease some of the insecurity and to relieve some of the financial burden for individuals, families and their communities. The workers' compensation program responds to the consequences of work-related injury and illness by providing health care, partial wage loss replacement, benefits to survivors of deceased workers and some return to work assistance.

In the committee's public meetings, we heard about the devastating effects an interruption in income following a workplace injury or illness can have for individuals and their families. Workers, employers, families and communities rely on the Workers' Compensation Board to be there for the injured worker, surviving spouses and dependant children when they are most in need of support. They expect the board's representative to be a friend at a time of need. Injured workers told us how sorely disappointed and angry they are when their expectations are not met.

The principles at the core of the program are no-fault compensation for wage loss; collective employer liability and funding; security of payment to workers and their families; and administrative collection, adjudication and payment by an independent body with exclusive jurisdiction.

To ensure security of future payment, the projected medical, wage loss and other future costs for present day injuries are fully capitalized today. The capital amount is set aside and invested to generate revenue to help pay the future costs. A much less secure approach is current cost funding, or pay-as-you-go.

The vehicle for administrative collection, adjudication and payment is a statutorily constituted board administering a statutory program for a communal and public good, not for private, partisan or profit interests. This public board is expected to be impartial, compassionate and vigilant in its mission. It is expected to be efficient and effective in the administration of the program.

The fundamental characteristics of workers' compensation are:

- It is a compulsory substitute for tort claims in the general courts and gives employers and workers immunity from lawsuits for negligence in the workplace. Each employer and worker receives this benefit as a participant in the statutory program. Workers come to the program entitled to health care and compensation because they cannot go to court. Compensation for loss, not need, is the first principle of legislated benefits.

- An independent administrative board, not the elected government of the day, administers the workers' compensation program. The board is a substitute for the courts and not an extension of the elected executive of government. The board is, first and foremost, part of the administrative justice system. It is not an economic development, social or dividend-producing agency for government or others. The board's decisions on individual claims can be appealed to an independent tribunal, the Workers Compensation Appeals Tribunal.
- The workers' compensation program is funded by assessments paid by compulsory, participating employers and revenue from investment, not by revenue raised by taxation. Employers collectively share liability and individually receive immunity from suit. Current day employers are expected to pay for all the present and future costs of current day injuries. Over the decades, the Government of Nova Scotia has made contributions to the program from general tax revenue.
- The scope, content and administration of the present workers' compensation program have evolved from compromises between representatives of workers and representatives of employers and decisions by government. From time to time, often after public review, the program and its governance structure have been modified. The government is expected to maintain balance among competing interests. It is expected to enact legislation to express and maintain the compromises without allowing either workers or employers to impose their will over the program. The government is to initiate reviews to keep the program up to date and to enact necessary changes.
- Workers and employers assert an ownership over the statutory program and the agencies administering the program. Workers and

employers should have direct influence on the selection and appointment of the representative members of the board. As a consequence, the board's governance and accountability are more complex than most other administrative agencies established by legislation.

3.02 Evolution of the Nova Scotia Workers' Compensation Program

In the early 1900s, Nova Scotia enacted a workplace injury compensation system fashioned on one established in Britain in the late 1800s. Workers were compensated only when it could be established their employer was at fault. A different, no-fault approach had been pioneered in Germany.

In 1913 Sir William Meredith, Chief Justice of the Ontario Supreme Court, studied several approaches and recommended Ontario adopt the German approach. Ontario did and in 1915 Nova Scotia was the first province to follow its lead. The Nova Scotia Workmens' Compensation Board opened its doors in January 1917.[2] At the time, the major injury-causing industries in Nova Scotia were mining, forestry and fishing.

It was hoped the no-fault, public system would take less time and consume less cost than traditional liability insurance claims and litigation in the courts. It was anticipated the program would remain free of political interference and provide both workers and employers with a fast, fair, friendly and final method of resolving disputes that arose over injury, illness and death at the workplace.

After an initial government contribution to start the program, employers were to be assessed all the benefit and administration costs. The continuing costs were to become part of the consumer's cost for industrial products and services.

Over the years, the program has been subject to pressure from stakeholders for lower assessment rates and better benefits; to the unpredictability of revenues rising and falling with the provincial economy; to different interpretations of the legal framework for the program; to the knowledge, availability and practices of the health care system; to political interference; and to some legislative responses (often characterized as "quick fixes") to get through the problems of the day.

The workers' compensation program has undergone numerous reviews and changes in the past 85 years. In its early years, it was once described as becoming a system of unemployment insurance.[3] More recently, its evolution has been described as "institutionalized failure."[4]

Some of the ongoing requirements for a sound workers' compensation program are similar to those of a private insurance system:

- adequate capital reserves to meet existing and future liabilities
- risk management initiatives to prevent future losses
- a cautious approach to investing and managing administration costs
- daily practices that maintain relationships with clients over the long term.

Fig 3.1 **Key Reports, Legislation and Judicial Decisions in The Evolution of The Workers' Compensation Program**

1900	Employers' Liability Act
1910	Workmen's Compensation Act
1915	Workmens' Compensation Act, 1915 (no-fault)
1927	Royal Commission (Dennis Commission)
1935	Logan Report (Alfred T. Logan, Workers Compensation Report, unpublished, May 17, 1935)
1937	Royal Commission (Hanway Commission)
1954	Complete Revision of Legislation
1958	Royal Commission (McKinnon Commission)
1968	Royal Commission (Clarke Commission)
1968	Substantial Revision of Statute
1969	Harris Report on Fish Processing Industry
1973	Select Committee
1974	Select Committee
1977	Pneumonoconiosis Report
1978	Committee of Review
1981	Select Committee
1984-85	External Management Consultants' Reports to the WCB
1985	Auditor General's Report (Reviewed four management consultants' reports on the administrative structure and internal divisions of the WCB)
1988	"The Turning Point" (Ministerial Action Group)
1989	"Changing to Meet Today's Challenges", Labour Department White Paper
1990	*Hayden* Decision, NS Court of Appeal
1990	Select Committee Heard Public Submissions on Bill 99
1990	*MacKay* decision, NS Court of Appeal
1991	Report of the Select Committee: Bill 99 tabled, but not passed
1992	Bill 283: new Board of Directors, comprised equally of labour and employer representatives
1993	Discussion Paper on "The Calculation of Benefits"
1993	Peat Marwick Stevenson & Kellogg "Cost Driver Study"
1994	Proposals for Reform Discussion Paper

1994-95	New *Workers' Compensation Act*, Royal Assent Feb 5, 1995, earnings loss proclamation Feb 1, 1996
1995	Stakeholder Discussion Paper on Chronic Pain
1996	Auditor General's Report
1997	*Doward* Decision, NS Court of Appeal
1998	Auditor General's Report
1998	Select Committee
1999	Amendments to the *Workers' Compensation Act*, Bill 90
2000	*Laseur* and *Martin* Decisions, NS Court of Appeal
2001	Review Committee Appointed
2001	Leave to Appeal to Supreme Court of Canada granted for *Laseur* and *Martin* Decisions on Chronic Pain

3.03 Court Interpretation Directs Major Change – March 23, 1990

Shortly after the program was enacted, Canadian workers' compensation boards began using a clinical rating schedule (commonly called the meat chart) to assign a percentage of physical impairment to most injuries. The percentage was used to determine the extent of an injured worker's loss of wage-earning capacity. This administratively convenient approach changed abruptly in Nova Scotia on March 23, 1990. The unique feature of the change is that the courts directed it. It was not the result of a consensus of workers and employers or a decision of the legislature, as in other provinces.

Mechanic Stephen Joseph Hayden injured his back on March 29, 1985. The Workers' Compensation Board paid him temporary total disability benefits, or wage loss replacement, until January 20, 1986. He appealed to the Workers' Compensation Appeal Board, the independent appeal tribunal at the time. It ordered that his benefits continue until May 1, 1986.

Mr. Hayden requested, and the board denied, a permanent partial disability pension. He appealed to the appeal board. On January 27, 1988, the appeal board allowed his appeal and awarded him 20 per cent permanent partial disability benefits effective March 10, 1987. The effective date was the time at which he appealed, not May 1, 1986, when his benefits were terminated.

Mr. Hayden appealed to the Nova Scotia Court of Appeal. He sought benefits from May 1, 1986, and wanted more than the 20 per cent permanent partial disability benefits he had been awarded. On May 10, 1988, the court allowed the appeal, ordered benefits to be paid from May 1, 1986, and returned the question of the appropriate percentage of disability to the appeal board.[6]

The appeal board affirmed its previous decision that Mr. Hayden should receive 20 per cent. He appealed again to the court of appeal. The court had said a decade earlier in 1977 that: "Compensable disability is a relative concept and occurs if injury has affected the particular workman's capacity to work at his particular job."[7] Mr. Hayden's physician said he had a 20 per cent loss of physical function, but also said it was unlikely he would ever be able to get back into the wage-earning work force.

Over the years, the court of appeal had been a guardian of the injured worker and had repeated that the statute was to be liberally interpreted in favour of the worker with all reasonable inferences drawn in the worker's favour.[8] On Mr. Hayden's appeal, a majority of the court determined the statute required the Workers' Compensation Board and the appeal board to determine compensation "on the basis of the loss of earnings occasioned by an injury which resulted in the disability."[9] They could not simply use the percentage of physical impairment determined under the clinical rating schedule to estimate future wage loss.

The clinically rated extent of physical impairment might or might not be the same as the estimate of future impairment of earning capacity. The court said: "Indeed, in some cases, there may be a total impairment of earning capacity with a relatively smaller degree of physical impairment as defined by the medical doctor."[10] The dissenting justice concluded the extent of earning capacity could be estimated from the nature and degree of the compensable injury.

> In other words, the board's approach over the last 50 years of tying the impairment of earning capacity to the degree of physical impairment in determining the amount of permanent partial disability benefits under s. 38 of the act is an interpretation that the legislation can bear. If this were not so then the board would never have to consider the degree of physical impairment.
>
> The board's method of calculating permanent partial disability benefits over the past half century is one that has been accepted by employers and employees alike. To impose upon the board an entirely new method or approach to the assessment of compensation is, in my opinion, a matter for the legislature and not for the courts. It must be remembered that compensation is paid out of an accident fund created by assessments imposed upon employers. To drastically change the basis upon which compensation is paid might well have disastrous effects financially on some employers.
>
> It is not disputed that what the worker is compensated for is the reduction in his earning ability caused by the injury. In my opinion, the extent of the injury must be taken into account in determining the amount of compensation. This, as I have said before, is the practice that has been followed by the board since 1938 and I say again is one that is not patently unreasonable.[11]

This decision was issued March 23, 1990, a date which has become significant in the ongoing administration of the workers' compensation program.

After a decade of study in the 1980s – Select Committee of the Legislative Assembly (1981), management consultant reports (1984-85), auditor general report (1985), ministerial action group (1988), departmental white paper (1989) – the 1990s began with the judiciary directing a critically fundamental change to the workers' compensation program.

3.04 Structural Change Was The First Legislated Response – 1992

The court of appeal decision created uncertainty and destabilized the workers' compensation program. The number of appeals to the Workers' Compensation Appeal Board and court of appeal increased dramatically.[12]

The first legislated response was to tell the courts not to decide any question until notice was given to the Workers' Compensation Board and Minister of Labour[13] and to reconstitute the Workers' Compensation Appeal Board.[14]

At the same time, the Workers' Compensation Board was restructured from a traditional commissioner model to an expanded, part-time board of directors with a chief executive officer.[15] In June 1992 this new governing body inherited the responsibility to administer the statute in accordance with the direction of the court of appeal and to address a recently disclosed critical shortfall in funding.

3.05 Six-year Transition Period – March 23, 1990 to February 1, 1996

The Workers' Compensation Board did not immediately revisit its past benefit decisions or begin to implement the court's decision for current claims. In January 1997, board counsel informed the court of appeal that "no worker has ever received benefits" based on the interpretation in the March 23, 1990 decision.[16] No worker has.[17]

In November 1992, the board suspended making new awards for permanent benefits to allow time to develop a new approach to calculation of permanent disability awards. At the time, the board decided to pay retroactive transitional interest to those affected by the suspension.[18] Most of it was paid in 1997.[19]

The board also adopted an Interim Earnings Loss policy. Injured workers with permanent injuries and an earnings loss were to be assessed and paid benefits equivalent to the clinical rating schedule until a new system was put in place.[20]

Fashioning a new system took longer than anticipated. On November 24, 1993, the board adopted an Amended Interim Earnings Loss (AIEL) policy. Under the AIEL policy, a permanently injured worker was paid 50 per cent of 75 per cent (or 37.5 per cent) of the worker's lost wages. This was one-half, with an implicit promise of more to come later when a final earnings loss policy was adopted. The board had discretion to make higher awards when the impairment was significant and hardship was demonstrated. Ten higher awards were made.[20]

This was a foreshadowing of further complexity. Workers were being categorized according to when they were injured. Some were injured before March 23, 1990 ("pre-Hayden"). Some were injured when the original Interim Earnings Loss policy was in effect and some were injured when the AIEL policy was in effect. Approximately 298 workers received compensation under the AIEL policy. Later, there were workers who were injured after February 1, 1996, the date the new statute came into effect.[21] The period between March 23, 1990 and January 31, 1996 is known as the "window period."

Date of injury driven differences in compensation entitlement is an overarching legacy of the 1990s. Explaining why injured workers are categorized as they are and the benefits they are entitled to receive is a confounding exercise that increases the complexity of the program and creates other problems. Naturally, astute workers and advocates seek to have injuries categorized in a way that will maximize compensation entitlement. This creates disputes and appeals.

Some workers were injured in two or all three periods – pre-Hayden, window and after the new statute in 1995. Some suffered chronic pain, which was, and is, treated differently for benefit entitlement purposes depending on when the injury occurred and the stage of appeal, if any, at certain times. The complexity of these situations has generated frustration, confusion and lengthy litigation.[22]

Injured workers who received compensation under the AIEL policy had been previously receiving benefits based on the clinical rating schedule. For them, the AIEL policy resulted in an increase in benefits.[23]

The new 1995 statute was preceded by a discussion paper, which proposed it apply to all decisions made after it was enacted.[24] The new statute includes extensive transitional provisions setting out rights under the former and the new statute. One transitional provision deems that all compensation decisions on injuries prior to March 23, 1990 had been made in accordance with the former statute, even though the court of appeal had decided some of them had not.[25] This was the long-awaited new earnings loss policy for workers injured before the new statute came into effect.

The board repealed the AIEL policy in October 1995 in anticipation of the new legislation in February 1996.[26] The 298 injured workers receiving benefits under the policy were given compensation calculated as it had been calculated before March 23, 1990. The consequence was reduced benefits for these injured workers and their families, after a period (sometimes as long as three years) at a higher level of benefits.[27]

3.06 Judicial and Legislative Review – Substituted and Supplementary Benefits

Injured workers who anticipated that the court of appeal decision would require the Workers' Compensation Board to review their circumstances and compensation were not pleased that the deeming by the new statute shut them out of the new approach to compensating for lost earnings. They turned to the court of appeal.

For workers injured in the window period, the court of appeal suggested in 1997 that the rules under the former statute would apply to determine entitlement and calculate permanent benefits. It also held that chronic pain was compensable under the former statute.[28] The board increased benefits to 75 per cent of gross from 85 per cent of net for window period, permanently injured workers.[29] In a later court of appeal decision, the board learned it had not been required to do this. Permanent benefits paid to all workers injured in the window period were to be calculated in accordance with the new statute and not in accordance with the former statute.[30]

In 1998 the court of appeal decided these window period injured workers with permanent benefit entitlement were entitled to compensation for chronic pain. This was estimated by the board to affect 800 injured workers. The initial benefit liability estimate was $40.2 million.[11]

There were many appeals in the appeal system. In 1999, the statute was amended to resolve the outstanding chronic pain claims of workers injured in the window period. A permanent impairment benefit according to a set formula was awarded to a worker injured in the window period with chronic pain who was receiving temporary earnings replacement benefits as of November 25, 1998, or had a claim under appeal or whose appeal period had not expired. The appeal was null and void.[12] After this amendment, the estimated number of affected workers remained at 800, but the benefit liability estimate was reduced to $25 million.[13]

There were 529, not 800, workers who received this benefit.[14] Some submitters accept the board's estimate of 800 as a firm number. They believe that 271 workers injured in the window period have been denied chronic pain benefits that others in the same situation received because the November 25, 1998 date excluded them. They believe some of the 271 workers did not have an appeal in the system at November 25, 1998 because the workers were misled and settled their claim in the alternate dispute resolution process, which resolved 517 appeals in Phase I.

In 1998, the select committee recommended that benefits awarded under the board's AIEL policy, and later reduced by the board when the new statute was adopted, be reinstated for the 298 injured workers injured before March 23, 1990.[15] It recommended that the AIEL benefits not be available to any other workers injured prior to March 23, 1990.[16] The AIEL benefits were reinstated for 255 injured workers in 1999 with the passage of Bill 90.[17] They had been injured prior to March 23, 1990; had been granted a permanent partial or total disability benefit under the former statute; and had been granted an amended earnings loss benefit, which was later reduced. This was a "substituted benefit" for any permanent partial or total disability benefit.

Before each worker could receive this substitued benefit, the injured worker had to abandon any appeal pending before the Workers Compensation Appeals Tribunal, unless the appeal was simply seeking medical aid. Some of the workers who abandoned their appeal are dissatisfied that this was the price they had to pay to be eligible for the substituted benefit. By abandoning their appeal, they abandoned any claim to compensation for chronic pain.

There are 43 workers who did not have the AIEL benefits reinstated. Of the 43 workers, 27 reached a settlement of their appeal through an alternate dispute resolution process before 1999.[illegible] The committee has not been able to determine what happened to the benefits of the other 16 injured workers.

The AIEL benefits were not extended to other workers injured prior to March 23, 1990. Some of these workers are dissatisfied that they did not receive benefits under the AIEL policy.

A second over-arching complexity inherited from the 1990s is that there was an element of process lottery in benefit entitlement. Like situations were not dealt with in a like manner. Depending on whether a worker had an outstanding appeal or had received benefits under a repealed or over-ridden policy, the worker benefited from subsequent legislation, regulations or policy.

A legacy of the 1990s is a sense of unfairness and injustice among workers that drives injured worker association advocates. The belief of an injustice to an unidentified number of injured workers will not disappear. There is a strong feeling that workers have been discriminated against because of the nature of their disability and inefficient administration, which caused a backlog.

The 1995 statute provides that pre-Hayden injured workers can apply for a new benefit called the "supplementary benefit."[illegible] Entitlement to receive this benefit is based on injured workers proving continuing financial need because their annual income is below a certain amount. The amount set for need is the threshold for individuals to receive benefits under the Guaranteed Income Supplement program under the federal *Old Age Security Act (Canada).*[illegible]

3.07 **Funding Crisis Disclosed in Early 1990s**

The second major challenge for the new directors of the Workers' Compensation Board was a funding crisis disclosed in the early 1990s.

The board's first commissioners had the choice to collect annual assessment revenue from employers based on either current annual payments by the board – a current cost plan – or based on all present and anticipated future costs of current year injury claims – a capitalized reserve plan. The commissioners chose to collect annual assessment revenue on a capitalized reserve plan. Self-insured employers, who do not share in collective employer liability, pay assessments on a current cost or pay-as-you-go basis.

The assessment rates for the first collective liability assessments in 1916 were set to provide revenue to cover all compensation payable in 1917 and to pay the costs of administration for the year. In addition, there would be enough revenue to set aside money for all future compensation for accidents that year and an additional amount to start a disaster reserve.[41]

Workplace disasters struck early. Sixty-five workers were killed on July 25, 1917, in an explosion at a New Waterford mine. On December 6, 1917, hundreds were killed or injured in the Halifax Explosion following the collision between the *Mont Blanc* munitions ship and *S.S. Imo*. Eighty-eight died on January 23, 1918, at a Stellarton coal mine. On March 15, 1918, twenty-two died in a night fire in a lumber camp in Colchester County. The board was reimbursed for, and Nova Scotia industry was relieved from, the costs for the Halifax Explosion as a war loss by the federal government.[42]

More recently, in 1991 the board had a disaster reserve of $7.68 million.[43] This entire amount, and more, was spent to provide coverage to workers (or their families) killed and injured by the Westray mine disaster of May 9, 1992.[44] No money has been allocated to this or any other reserve since then.[45]

Maintaining a current, balanced fund for all future payments for past injuries is a challenge in a changing environment. Changes in the nature and scope of benefits alter predictions for the future. Occupational diseases generally have long latency periods. Life expectancy projections and investment return estimates change. Retroactive benefit changes transfer payments to current and future employers from past employers. If current assessment rates and revenue do not include the full amount of all future costs for current claims, then future assessment revenue will have to pay for those costs.

For the past 25 years, the board has not maintained balanced funding. A 1973 amendment to the statute, effective in 1975, provided for annual Consumer Price Index (CPI) increases in pension payments.[46] From 1976 to 1980, the board set aside capital amounts to pay new pensions and included an amount for future CPI increases.

This practice was changed in 1980 and the Pension Reserve Fund was valued without assuming that inflationary increases would be paid from this fund. Over $15.8 million was transferred from the pension liability fund to a contingency fund. The board had a pension fund balance of $45,307,972 after transferring the $15.8 million to the contingency fund. The balance of the contingency fund was increased December 31, 1980, to $21.1 million. The board also had a disaster reserve of $3.2 million.[47]

The board reported in 1980 that: "Presuming that inflation continues over the years, the cost factor based on probable CPI increases and the compounding factor each year shall be very substantial in years to come."[48] However, assessment rates were not correspondingly increased to pay for the increasing costs. Despite inflation driving up CPI increases throughout the 1980s, the average assessment rate per $100 of assessable payroll was set at a relatively constant rate.[49]

Fig 3.2 **Average Assessment Rates: 1981 – 1989**[50]

1981	1982	1983	1984	1985	1986	1987	1988	1989
$1.26	$1.18	$1.18	$1.20	$1.18	$1.19	$1.23	$1.32	$1.34

By 1984 projected future liabilities exceeded assets by $55.9 million. In 1988 it was determined the shortfall should have been $95.6 million, which was then reduced by various means to $72.7 million. New actuaries in 1989 determined the $72.7 million should have been $94 million. By the end of 1989, the shortfall was revised to be $113 million and later to $180 million.[51]

This shortfall of money set aside to pay promised benefits to workers injured in the past is called the "unfunded liability." One year later, as of December 31, 1990, the unfunded liability was again revised and reported as $216.3 million.[52]

On the assumption the future benefits liabilities for current and past injuries and diseases will be paid by the self-insured employers as the costs occur, these future liabilities are not included in the board's future liabilities.

Assessment rate suppression continued in 1990, when the average assessment rate was $1.47 per $100 assessable payroll, the lowest in Canada. The maximum assessable wage rate was dramatically increased from $29,000 to $36,000.[53] It was not increased again until 1995, when it was set at $38,000 and automatically reviewed annually.

The Nova Scotia provincial average assessment rate position changed only slightly in 1991, after a 13 per cent increase.

Fig 3.3 **Provincial Average Assessments Rates for 1990**[54]

NS	Sask	BC	PEI	Alta	NB	Man	PQ	Nfld	Ont
$1.47	$1.60	$1.73	$1.74	$1.86	$1.94	$2.27	$2.50	$2.51	$3.18

Fig 3.4 **Provincial Average Assessments Rates for 1991**[55]

Sask	**NS**	PEI	BC	Alta	NB	Man	PQ	Nfld	Ont
$1.60	**$1.66**	$1.80	$1.93	$1.98	$2.04	$2.30	$2.32	$3.00	$3.18

By December 31, 1991, the unfunded liability as of December 31, 1990 was restated as $360.6 million and the December 31, 1991, figure was adjusted to $405.7 million.[56] The next year, it increased to $407.5 million.[57] At the end of 1993, it was $460.2 million.[58] This is the highest the unfunded liability has been stated to be.

In 1992, the Auditor General found the increase in stated liabilities was due to refinements in the actuarial estimation process; addition of previously unrecognized liabilities; correction of past errors; increases in the size and duration of claims; and failure to increase assessments to match increases in claim costs.[59]

The average assessment rate increased 19 per cent in 1992 to $1.98 and another 15 per cent in 1993 to $2.28. Only Ontario, Quebec and Newfoundland had higher average assessment rates.

All of this had been set in motion long before the new board of directors and chief executive officer were appointed. They did not create the problems, but they were mandated to find the solutions to correct them.

In 1994 the average assessment rate was $2.54, where it has remained. This was a 73 per cent increase from 1990 to 1994.

Increasing the average assessment rate was a necessary response to inadequate rates throughout the 1970s, 1980s and early 1990s – a period when for many years Nova Scotia boasted the lowest average rate in Canada. To ease the transition to increased rates for individual employers, the board limited annual increases and decreases of rates for individual employers to 20 per cent. It anticipated "… it may take up to five years for new rates to be fully implemented."[60] This meant rates for some employers were 2½ times less than what they should have been to properly reflect their claims cost experience.[61]

In 1994, Nova Scotia had the lowest percentage of future liability funding among the provincial boards.

Fig 3.5 **Provincial Percentage of Funding Set Aside for Future Payments in 1994**[62]

NS	Ont	Nfld	PQ	NB	PEI	Alta	Man	BC	Sask
27%	36%	53%	54%	80%	83%	85%	91%	95%	106%

In 2001, Newfoundland had the highest average assessment rate at $3.24. Nova Scotia was second highest at $2.54.[63] For 2002, the Nova Scotia average assessment rate will remain at $2.54, while there are dramatic increases in some other provinces. The New Brunswick average assessment rate will increase 15 per cent to $1.90.[64] The Alberta average assessment rate will increase by 27.3 per cent to $1.68.[65] The Manitoba average assessment rate will increase by 4.69 per cent, from $1.49 to $1.56.[66]

While the average assessment rate is $2.54, the baseline rate for some employers for 2002 is as low as $0.55 per $100 of assessed payroll. Some employers have individual rates in excess of $8.00 or $11.00 per $100 of payroll and are concerned they may go even higher. Some employers expressed concern that rates for new entrants, like the natural gas pipeline industry were set at only $0.97[67] when the industry first came to Nova Scotia. The base rate for this industry for 2002 is $1.20.

While in 2001 Nova Scotia had the second highest average assessment rate, in 1999-2000 it had the second lowest provincial tax load on businesses. In 2000-01, it had the lowest provincial tax load. The provincial tax load on businesses against a provincial average of 100 for these two years was as follows.[68]

Fig 3.6 **Provincial Tax Load on Business in 2000**

PEI	**NS**	Alta	PQ	NB	Ont	Man	BC	Nfld	Sask
72.0	**75.3**	77.0	91.2	92.9	101.2	112.9	125.0	173.0	178.7

Fig 3.7 **Provincial Tax Load on Business in 2001**

NS	PEI	Alta	NB	Man	Ont	PQ	BC	Nfld	Sask
63.6	71.7	84.2	84.9	91.4	98.0	103.4	109.2	164.3	177.0

In 2000, Nova Scotia's capitalization or percentage of funding of future liabilities had risen to 68.3 per cent.

Fig 3.8 **Provincial Percentage of Funding Set Aside For Future Payments in 2000**[69]

Nfld	Ont	PEI	**NS**	Sask	PQ	NB	BC	Alta	Man
65%	67%	68%	**68.3%**	101%	104%	105%	109%	110%	111%

The response in the mid-1990s to rising assessment rates and continuing unfunded liability was to take dramatic legislative, policy and administrative action which was to make all injured workers, current employers, their families and communities pay for the past failings of others. It was those responses that many persons wanted to speak to us about, not the 28 review topics.

3.08 New Statute, Appeals Tribunal and Appeal Backlog in 1995-96

Although the board adopted an Interim Earnings Loss policy and an Amended Interim Earnings Loss policy, it decided it needed a new statute with new provisions to make the transition from the clinical rating schedule approach to a new earnings loss approach. At the same time, a growing backlog of appeals had to be addressed.

Public discussion about a new statute was initiated with a discussion paper from the Minister of Labour in October 1994.[70] A new *Workers' Compensation Act* was passed in 1995.[71] One section introduced a waiting period; changed the basis of compensation from 75 per cent of gross pre-injury earnings to 75 and 85 per cent of net earnings; enabled the board to pursue investment strategies to increase its return on investments; and allowed the cabinet to pass regulations concerning appeals.[72] This section was proclaimed in force effective June 1, 1995.

In May 1995, the cabinet adopted the Workers' Compensation Transitional Appeal Regulations.[73] These regulations reconstituted the appeal board and assigned the backlog of appeals pending as of June 1, 1995, to the appeal board, which was to cease to exist when the job was done or October 31, 1995. Any appeals after June 1, 1995, and any appeals remaining from the appeal board after it ceased to exist were to be heard by a newly constituted Workers Compensation Appeals Tribunal (WCAT).[74] The appeal board ceased to exist on January 31, 1996, and 80 appeals were transferred to WCAT.[75]

In the preceding years, the number of appeals to the appeal board had increased and the percentage allowed by the appeal board had been high.[76] In 1993, a former appeal board (which was one part-time chairperson, with four part-time panel members, who did not provide reasons for decisions) was replaced with a nine-member appeal board. It had a chair and vice-chairs with employer and employee representatives on each panel.

The reconstituted appeal board was handed a backlog of more than 1,400 cases.[77] By 1995 the backlog had grown to more than 1,985 appeals. The appeal board made recommendations about how the backlog could be resolved.[78] The government chose to create a new appeals tribunal.

Most sections of the new *Workers' Compensation Act* were proclaimed effective February 1 or 6, 1996. Section 236(1), proclaimed effective April 23, 1996, authorized cabinet to decide who would deal with the outstanding backlog.[79]

On April 23, 1996, the cabinet adopted the Workers' Compensation Appeal Backlog Regulations.[80] All appeals not decided by the former appeal board by February 1, 1996 were referred to the new appeals tribunal. Employers were barred from participating in these appeals.[81]

There were 2,153 appeals at the appeal board that had bypassed the Workers' Compensation Board's internal appeal to a hearing officer. On June 1, 1995, these were sent to the board's hearing officers who decided substantially all the appeals by February 1997. These are called "transitional appeals." Of the 2,153 transitional appeals, 1,268 were appealed to WCAT.

There was no plan in place and it took time for WCAT to become established and operational. It commenced operations in January 1996 with three appeal commissioners, although a chief appeals commissioner was appointed in September 1995. Two more appeal commissioners were hired in April 1996.

WCAT did not keep up with the volume of incoming appeals. By December 31, 1996, it had made only 81 decisions, including 43 decisions granting leave to appeal. For the 19 months, June 1995 to December 1996, 1,930 appeals had been filed and only 38 cases had been closed.

Fig 3.9 **Build-up of WCAT Backlog (June 1995 to June 1998)**[82]

Year (or portion)	Transitional Appeals Filed	New Appeals Filed	Final Decisions	Backlog Contribution
1995 (June to Dec)	208	188	–	396
1996	862	672	(38)	1,496
1997	194	973	(373)	794
1998 (Jan to June)	4	352	(508)	(152)
Total	1,268	2,185	(919)	2,534

The appeal backlog was a major issue before the all-party select committee in 1998 and the legacy of the actions taken to eliminate the backlog was a prominent subject in the submissions to this committee.

In 1998, WCAT fashioned a plan to eliminate the backlog by July 2000 with more appeal commissioners, amendments to the statute and using an Alternative Dispute Resolution (ADR) process. The most common, peaceful way to decide disputes is through a law suit (litigation) in court or before an administrative tribunal, like WCAT. There are voluntary alternative processes that can be faster, less formal and less expensive. They are collectively called alternative dispute resolution processes. Two common ones are arbitration and mediation.

Following a Quebec initiative to eliminate a backlog, WCAT undertook a voluntary alternative to the formal appeal process. The process implemented by WCAT involved some negotiation between the board and the injured worker with a WCAT commissioner facilitating discussions, ensuring any agreement was not unreasonable and incorporating the final agreement into a WCAT decision.[83]

The ADR process began in 1997 with 25 "straightforward situations where there was reason to expect flexibility on both sides."[84] It was restricted to "transitional appeals" formerly before the appeal board. In 1997, 181 appeals were resolved.[85] This phase ran until August, 1998. In 1998 there were another 311 workers who resolved their appeal.[86] Some may have had more than one appeal.

From the date the select committee was established (June 22, 1998) to the date it made its report (November 26, 1998) many appeals involving chronic pain issues were placed on hold, then they were adjourned pending passage of Bill 90. The second phase on the ADR initiative began in March 1999 and concluded January 31, 2000. In this phase 204 appeals were settled. The total settled is 696. Including the 25 preliminary cases, the ADR process was used to resolve 721 appeals. Some injured workers have lingering dissatisfaction with the ADR process and the results they achieved in the process.

Fig 3.10 **ADR Session Outcomes (1997 – 2000)**

	Settled	Not Settled	Withdrawn or Cancelled
1997	181	44	11
1998	311	150	36
1999–2000	204	N/A	N/A
Total	696	194	47

In the first phase of the ADR process (1997 to August 1998), WCAT made no formal determination whether a case involved chronic pain. It began to make provisional determinations, subject to change after full consideration of the facts and submissions, in August 1998. Chronic pain and environmental illness cases were specifically excluded from the second phase of the ADR process.

One 1999 Bill 90 amendment gave a new permanent impairment benefit to workers injured in the window period (March 23, 1990 to January 31, 1996) with chronic pain who were receiving Temporary Earnings Replacement Benefits (TERB) and had an active appeal as of November 25, 1998 (the day prior to the introduction of Bill 90). They received a permanent impairment benefit based on a Permanent Medical Impairment (PMI) award of 12.5 per cent and 50 per cent of an Extended Earnings Replacement Benefit (EERB). Their appeals were deemed to have been null and void “regardless of the issue or issues on appeal.”

Some injured workers who settled their claim in the ADR process beginning the Spring of 1997 say they believe both the Workers' Compensation Board and WCAT knew chronic pain compensation would become available.[90] They contend they were duped into settling early and would have received more if they had waited and kept their appeal alive until November 25, 1998. Some want the claims of these window period injured workers with chronic pain claims who settled in the ADR process reopened so they can claim the benefit available to those who had an active appeal on November 25, 1998.

It is unlikely that all the 517 appeals settled before August 1998 involved chronic pain. It is possible some workers settled claims in the ADR process and abandoned or compromised their chronic pain claim. Others may have had decisions from WCAT finding no evidence of chronic pain or denying compensation for chronic pain prior to November 25, 1998 and, therefore, did not have an appeal in the system. The committee has been unable to determine the number or whether the settlement or decision was equal to, less than, or more than a permanent impairment benefit of 12.5 per cent.

Both the board and WCAT made decisions to deny chronic pain benefits to individuals because they were not in the appeal system as of November 25, 1998. Neither is able to say how many.

Some consider the November 25, 1998 date to be arbitrary. They want those who had not yet appealed, for whatever reason, to be able to claim the 12.5 per cent PMI and 50 per cent EERB. This is an estimated 271 based on the board's estimate of 800 window period injured workers entitled to compensation for chronic pain.

Some consider the 50 per cent EERB based on 85 per cent of net to be unfair. They say it should be based on 75 per cent of gross, the policy that was in effect during the window period.

Some injured workers harbour lingering dissatisfaction with the ADR process and the settlement they agreed to in the process. The committee had no way to determine how many of the 517 workers who entered into settlements of their appeals feel aggrieved. Not all ADR sessions arrived at a settlement.

The WCAT appeal backlog was eliminated by mid-October 2000.[91]

3.09 New Earnings Loss Replacement – TERB, PIB, PMI and EERB

Since 1915, the percentage of earnings used to compute compensation increased from 55 per cent of gross to 60 per cent to 66 2/3 per cent to 70 per cent and to 75 per cent in 1959. With increases in the maximum insurable earnings from $1,200 to $38,000 by 1995, the maximum weekly compensation grew from $12.69 to $548.08 in 1995. The first decrease in maximum weekly compensation was introduced in 1995.

Effective February 1, 1996, a legislated wage loss replacement scheme was put in place. The new 1995 statute introduced the concepts of temporary and extended earnings replacement benefits.

A Temporary Earnings Replacement Benefit (TERB) is to be paid every two weeks for as long as a worker is medically unable to return to work. For the first 26 weeks, the TERB is 75 per cent of the worker's net earnings loss. If a worker is off work due to an accident or illness for more than 26 weeks, the TERB increases to 85 per cent of the net earnings loss.[illegible] Calculations of both "earnings" and "net earnings" can be complex.

At 75 per cent of net in 1995, the maximum weekly compensation was $383.88. In 2001, it was $426.98. At 85 per cent of net, the maximum weekly compensation was $435.06 in 1995. In 2002, with maximum insurable earnings of $41,100, the maximum weekly compensation at 85 per cent of net is $483.91.

If the workplace injury or illness is permanent, a Permanent Impairment Benefit (PIB) might be paid to the injured worker to compensate for a permanent loss of physical ability of a particular body part or area. Before making a decision to pay a PIB, a board medical advisor does a medical assessment to determine a Permanent Medical Impairment (PMI) rating. The medical advisor uses a clinical rating schedule to determine the PMI.

On January 1, 2000, the board adopted the *American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 4th Edition.*[illegible] The AMA Guide is to be used when rating all workers injured after January 1, 2000. The former rating schedule is to be used for rating injuries before January 1, 2000. This is another date-driven distinction that some object to. They believe the board should use the AMA Guides for all current ratings as they do when rating hearing loss.[94]

The board caseworker decides whether an injured worker is eligible for a PIB and the amount of the PIB after considering the medical information on the injured worker's file and the extent of the PMI.[95]

An Extended Earnings Replacement Benefit (EERB) compensates an injured worker for a permanent loss of earnings. It is based on the difference between the worker's earnings before the accident and the worker's earnings or ability to earn after the accident. The worker is eligible for an EERB if the difference between the earnings loss and the PIB is greater than zero.[96]

3.10 Chronic Pain – Action, Reaction and Ongoing Confusion

There has been a longstanding debate about whether the workers' compensation program should compensate for subjective reports of pain, especially pain that remains after there appears to have been bodily healing of an injury.[97]

In May 1994, the Workers' Compensation Appeal Board spelled out conditions or criteria for accepting an injured worker's entitlement to compensation for persistent or chronic pain.[98] The Workers' Compensation Board began the process of adopting a policy on chronic pain by hiring Dr. T.J. Murray to conduct a literature review and to write a report, which was completed in February 1995.

In March 1995, the Minister of Labour wrote to the board.

> The speed with which the backlog can be properly addressed will be affected by not only staffing levels and other administrative factors, but also by the board's policy or lack thereof, in the area of chronic pain. Not only should hearings at both the internal and external levels be heard as quickly as possible, but the decisions which result should reflect the bipartite Board's long-term view on how chronic pain cases should be handled.

> *Without in any way suggesting to you what that policy should be*, I would urge you to move as quickly as possible towards finalizing a policy on chronic pain… For the sake of all those who are involved in the workers' compensation system, it is of overriding importance that the external and internal backlogs be brought under control in as short a time as possible.[99]

The board began public consultation with a discussion paper in July 1995.[100] Following consultation and research and staff development of a strategy, the board decided not to give a Permanent Medical Impairment (PMI) rating for chronic pain. Chronic pain would be excluded from coverage and compensation by regulation.

The board established a time-limited functional restoration program commencing February 1, 1996 with the cost for an individual worker capped at $2,000. It was to be a pilot program and evaluated annually.[101]

In March 1996, cabinet adopted the Functional Restoration (Multi-Faceted Pain Services) Program Regulations ("FRP Regulations"), which excluded chronic pain from coverage under the statute.[102] In April 1996, the board revised its policy to conform to the regulations.[103]

The approach of the regulations and policy is to intervene to prevent chronic pain and then to manage the pain, not compensate for chronic pain.

The regulations prompted litigation interpreting and challenging the regulations. In 1997, the court of appeal limited the retroactive application of the regulations to February 1, 1996 and raised the question whether workers injured in the window period (March 23, 1990 and before February 1, 1996) were entitled to compensation for chronic pain.[104]

The board responded in 1998 with policies for certain of the injured workers in the window period. It used a Marked Life Disruption Assessment (MLDA) tool to assess 125 workers as having mild, moderate, severe or extreme marked life disruption from pain. The finding was used to establish a PMI where one did not exist. It was not used to increase existing PMIs. The new PMI was used to determine entitlement to Extended Earnings Replacement Benefit (EERB) or a Permanent Impairment Benefit (PIB).[105]

In 1999, the legislative assembly enacted amendments (Bill 90) to include Sections 10A to 10I dealing with chronic pain. Chronic pain is defined as in the previous regulations. No benefits are payable for chronic pain to workers injured prior to March 23, 1990. Injuries in the window period are deemed never to have included chronic pain, but workers with appeals as of November 25, 1998 were granted certain apportioned benefits (12.5 per cent PMI and 50 per cent EERB) payable back to January 1, 1999.

The board discontinued using the MLDA tool because the amendment directed that injured workers were to receive a 12.5 per cent PMI and 50 per cent EERB when there was a claim for chronic pain.[106] This is being challenged on the basis that the amendment does not apply to injured workers who did not have an appeal on November 25, 1998.[107]

Things have become even more complicated. On January 31, 2000, the Workers Compensation Appeals Tribunal issued decisions that certain of the provisions in Sections 10A to 10I were unconstitutional because they contravened the *Canadian Charter of Rights and Freedoms.*[108] The board abided by the decisions, which were appealed to the court of appeal. On November 8, 2000, the court of appeal decided the legislation and regulations *are* constitutional.[109] The board returned to applying all the sections of the statute, but, in the meantime, a backlog had accumulated.[110]

In June 2001, the Supreme Court of Canada granted leave to appeal from the decisions of the court of appeal. A Supreme Court of Canada decision is not likely until 2003 after the appeal is heard in the Fall of 2002. As of September 30, 2001, the Nova Scotia Court of Appeal had postponed decisions on more than 166 appeals before it until June 23, 2003. Seventeen other cases are before the Nova Scotia Supreme Court.[111]

A roadmap is required to plot how an injured worker's claim for compensation as a result of loss of earnings arising from chronic pain is to be decided. Entitlement to compensation for chronic pain is another confounding date of injury and date of process driven categorization of injured workers. It is so complex and technical that it discredits the workers' compensation program.

The *Ontario Workplace Safety and Insurance Act, 1997* permits limits and exclusions to chronic pain benefits.[112] The Ontario Workplace Safety and Insurance Board, in June 1997, proposed a new approach to chronic pain based on the Nova Scotia approach. The Ontario government asked the Ontario board to undertake an independent study. The board assembled a scientific panel and a policy panel. The final scientific panel study was published in February 2000. The policy panel, consisting of representatives of workers, employers and the medical profession, agreed to recommendations on prevention and management of chronic pain and compensation for the first 12 months after injury, but not on what to do after 12 months.[113]

Some submissions to this committee urge that a similar approach should be adopted in Nova Scotia with benefits for chronic pain extended for eight or 12 months, not the four weeks allowed under the FRP Regulations.[114]

The situation for injuries prior to March 23, 1990 is clear. Workers are not entitled to compensation for chronic pain for those injuries. The situation for injuries after February 1, 1996 is also clear. Workers are not entitled to compensation for chronic pain for those injuries. In both situations, the four week wage loss benefits and pain targeted services under the FRP Regulations may be available to the injured workers. All of this is subject to the appeal before the Supreme Court of Canada.

The situation for injuries during the window period (March 23, 1990 – February 1, 1996) is not as straightforward. After the April 17, 1997 court of appeal decision, the board determined workers injured in this period were entitled to compensation for chronic pain. Some workers were assessed with the MLDA tool adopted in July 10, 1998 and granted a PMI. Some received benefits in 1998. Some may have appealed the outcome of the MLDA assessment. Some may have had an appeal for other reasons. Workers who had an appeal pending on Wednesday, November 25, 1998, one day before the select committee report, received a 12.5 per cent PMI and 50 per cent EERB payable from January 1, 1999. The appeal was "null and void regardless of the issue or issues on appeal."[115] Workers who did have an appeal were not eligible for this benefit.

Some workers with window period injuries and chronic pain claims did not have an appeal on that date for various reasons, including:

- their claim had been settled in the ADR process
- their appeal had been heard and dismissed
- they had accepted the board's decision and did not have an appeal
- they were waiting for further medical diagnosis and assessment
- they were waiting to be assessed by the board under the MLDA tool.

For workers with chronic pain claims arising from window period injuries, the outcomes have been a lottery. Their injuries and chronic pain claims have not been dealt with in a way that responds to their individual medical and disability circumstances, their need or their entitlement. The legislative assembly adopted an approach simply to meet administrative expediency, namely diminish an appeal backlog, which the affected workers did not cause.

In 1998, the Board increased benefit liabilities by $40,203,000 to provide for chronic pain benefits arising from window period injuries.[116] The board's estimate was that there would be 800 workers entitled to compensation.[117] It is estimated there were 529 workers with injuries in the window period who received a compensation benefit for their chronic pain claim either because of the Bill 90 amendments (s. 10E) or the board's MLDA assessment.[118]

Injured workers believe 271 or more workers in similar situations with chronic pain have been denied benefits because the board's policy in response to the April 17, 1997 court of appeal decision was overridden by an arbitrary and simplistic requirement to have an appeal pending on November 25, 1998. They say this is harsh, illogical, denies these workers the promise and benefit of the court of appeal decision and the board's 1998 policy and leaves them in pain with no compensation.

A most recent development in the court of appeal lends support to the injured workers' position.[119] An injured worker, Mary Lloyd, argued before the court that her appeal to the Workers Compensation

Appeals Tribunal was not null and void with respect to claims arising from five injuries, of which two were prior to March 23, 1990 and three were in the window period. The board argued "that the sole parameter for inclusion in s-s. 10E(d) is that a given appeal be at any time within the system, irrespective of the subject matter." This is the approach the board and WCAT had taken.

On February 4, 2002, the court of appeal decided the board's position was a "harsh and illogical result."

> There is no apparent reason why, in providing benefits for chronic pain in the window period, the Legislature would take away every other possible claim a worker had, whenever it arose, even if not related to chronic pain, or however serious, just because the worker had an appeal respecting it under way on November 25, 1998 and happened to have chronic pain following a window period injury.(20)

The court of appeal determined that the words "regardless of the issue or issues on appeal" are restricted to "appeals that relate to chronic pain only following a window period injury and make clear that all aspects of such an appeal are null and void." The court said: "Again, it would be difficult to think that the Legislature would remove a worker's right of appeal in other claims, however arising, just because the worker was eligible for the new benefit for chronic pain following an injury in the window period." This is exactly what the board and Workers Compensation Appeals Tribunal had decided the legislative assembly had done.

The result is likely to be that injured workers whose appeals were treated as null and void and received benefits under s. 10E will seek to reactivate their appeals for non-chronic pain issues in the window period and all issues outside the window period. Those who did not have an appeal pending on November 25, 1998 will watch the prospect of others in similar circumstances being entitled to still more benefits, while they are shut out by the failure to have an active appeal on November 25, 1998.

Fig 3.11 **Chronic Pain Benefits After Bill 90 (February 1, 1999) to Present**

	April 17, 1999 – January 31, 2000 Bill 90 to WCAT Decisions	February 1, 2000 – November 8, 2000 Post-WCAT Decisions to Court of Appeal Decisions	November 8, 2000 – Present
10B Old Act Chronic Pain, Pre-March 23, 1990	No Chronic Pain Benefits (Only FRP as entitled) Unless meet criteria for S.10D	No Entitlement to pain-targeted services.	No Chronic Pain Benefits (Only FRP as entitled)
10E "Window Period" Chronic Pain, Injuries March 23, 1990 – Feb 1, 1996	Chronic Pain Benefits in Accordance with S. 10E *WCAT determined constitutional so no benefit interruption		
FRP "New Act Chronic Pain" Post-Feb 1, 1996, S.10B(c)	FRP Benefits	Pain Targeted Services	FRP Benefits

3.11 Workers Advisers Program Underwent Major Changes

Injured workers have had free legal representation and assistance in preparing and presenting claims to the Workers' Compensation Board and appealing board decisions since 1957.[121] Under the former Workers' Counsellor Program, cabinet appointed lawyers as workers' counsellors to provide legal assistance to injured workers. A chief workers' counsellor reporting to the Minister of Labour monitored the program. The cost of the program was paid out of provincial general revenue.

The program received public attention in 1990 because of billing practices. It was audited and better controls were put in place.[122] In 1992 a new chief workers' counsellor was appointed and three lawyers and two support staff were hired. The objective was to monitor and better control billings and to determine if government lawyers could provide more cost-effective service.[123]

In 1993, there were 29 private sector workers' counsellors across the province. In fiscal year 1992-93 the cost was $2.8 million.[124] In 1994, the government opened the process by which private practice lawyers received designation as workers' counsellors. All members of the barristers society could apply and 150 lawyers were designated.[125]

The current Workers Advisers Program replaced the Workers' Counsellor Program in 1996. All advisers are government employees. The cost of the program is paid from the Accident Fund.[126] As a transition phase to facilitate appeals in progress, the private sector workers' counsellors were granted temporary adviser status for two years.[127] In 1999, the last of the files were transferred from private lawyers to the Workers Advisers Program, with offices in Halifax and Sydney.[128]

The committee heard many representations from injured workers who are dissatisfied with the Workers Advisers Program and that their right to select a private lawyer near their home has been removed.

3.12 Remarried Dependent Spouses

The equality provisions of the *Canadian Charter of Rights and Freedoms* were proclaimed in 1985. At the time, workers' compensation legislation across Canada provided for the termination of benefits for a surviving spouse of a worker who died because of workplace death, injury or illness if the spouse remarried. In October 1992, the Nova Scotia legislation was amended to maintain benefits for spouses who chose to remarry.[129]

In November 1998, the all-party select committee reported it had heard from many remarried widows who had their benefits terminated prior to October 1, 1992. The select committee recommended, and the legislative assembly enacted, a retroactive reinstatement of benefits to October 1, 1992 for all widows and widowers who remarried.[130] There was litigation over whether the benefits should have been reinstated to 1985 or earlier.[131]

Section 60A(4) of the act provides that dependent spouses must apply to have their benefits reinstated "on or before January 1, 2000, and the board shall not accept an application that is received after that date."[132] Unlike other provisions that allow the board to extend time for applying for benefits, this provision specifically directed the board not to accept applications after the date.

This amendment placed the onus of contacting the board on the dependent spouses whose benefits had been terminated. The board was unable to identify and notify each eligible dependent spouse. Most of them no longer had an ongoing relationship with the board. Some saw the newspaper advertisements prepared by the board, but indicated they thought it applied to miners' widows. Many had moved to other provinces or other countries for periods of time, as is common, for example, with military families stationed in Nova Scotia. Some heard from relatives in Nova Scotia in time to apply. Others did not. While the board made a conscientious effort to inform everyone by advertising and notifying other workers' compensation boards across Canada, some eligible persons simply missed the date.

Despite the board accepting any form of communication as an application, at least eight widows missed the deadline. The number affected and the pensions they received are very small. The committee is pleased that the government announced on June 6, 2001 that the legislative assembly will be asked to repeal the deadline for applying.[113] This will open the way for the eight widows and any other persons who may qualify to apply.

3.13 Compensation Costs Decrease – Other Costs Increase in 1990s

Through the turmoil and change in the 1990s, several costs in the workers' compensation program increased. Consistent with a national trend, health care costs increased dramatically.

Fig 3.12 **Health Care Costs in Millions (1991-2000)**

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
$17.0	$15.8	$16.8	$17.8	$17.2	$15.3	$15.2	$18.5	$22.1	$23.8

Moving to a wage loss method of calculating benefits prompted the board to endorse early intervention as an underlying philosophy for future policy and programs to help with a safe and successful return to work for injured workers.[114]

From 1991 to 2000, vocational rehabilitation costs have fluctuated between $3.5 and $1.5 million.

Fig 3.13 **Vocational Rehabilitation Costs in Millions (1991-2000)**

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
$2.0	$3.3	$3.5	$2.8	$2.5	$1.7	$1.5	$1.6	$2.0	$2.0

Workers' Compensation Board administration costs have increased. Injured worker assistance and occupational health and safety program costs have been transferred from provincial general revenue to the Accident Fund. Appeals tribunal costs have increased. Industry safety association levies collected by the board have increased.

Fig 3.14 **Administration and Other Costs in Millions (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
WCB	9.7	11.3	13.3	16.8	17.7	19.3	20.7	20.1	22.6	25.5
Appeal	.4	.4	.5	.4	.7	.7	.8	1.0	1.8	2.0
WAP	NA	2.8	2.7	2.5	1.7	2.1	1.9	1.9	1.5	1.6
OHS	.8	.8	.9	.9	.9	1.3	1.5	3.9	3.3	4.0
Levies	NA	NA	NA	.7	.7	.7	.8	1.0	1.3	1.4
Total	**$11.0**	**$15.3**	**$17.4**	**$21.2**	**$21.7**	**$24.1**	**$25.7**	**$27.9**	**$30.5**	**$34.2**

During the same period, payments to injured workers decreased substantially in 1997 to $68.47 million and $73.73 million in 1998, but increased substantially to $88.11 million in 1999 and $98.62 million in 2000. The payment growth rate has been erratic, with decreases in 1994, 1995 and 1997, modest growth in 1992, 1993 and 1996 and substantial growth from 1998 to 2000.

The total benefit liabilities increased from $531 million at the beginning of 1990 to $955 million at the end of 2000. Actuarial adjustments, based on claims experience, have been modest each year except 1996 and 2000. The experience adjustment was an increase of $10.5 million in 1996 and an increase of $18.59 million in 2000 following independent actuarial studies. As expected, the 2000 study indicates limited data is available with respect to the effect of the earnings loss provisions on aggregate benefit liabilities.

There have been several other actuarial adjustments during the decade.

1992 Amortizing the balance of the disaster reserve as a result of the Westray mining disaster decreased liabilities by $7.68 million.

1994 Legislative amendments which decreased liabilities by $72.36 million include:

- compensation based on net earnings
- long term benefits based on earnings loss and permanent impairment; annuity provisions
- indexing frozen for 5 years; 50 per cent of CPI thereafter
- government guarantee of 4.75 per cent real rate of return.

1996 Liabilities increased $40.37 million with a reduction in the projected real rate of return (discount rate) from 4.75 per cent to 4.04 per cent.

1997 Liabilities increased $28.81 million with a reduction in the real rate of return (discount rate) from 4.04 per cent to 3.5 per cent.

1998 Liabilities increased $40.2 million following inclusion of chronic pain benefits for injured workers whose entitlement to permanent impairment benefits arose after March 23, 1990 and before February 1, 1996 (the window period). The amount was the WCB's best estimate of the present value of the liability at the time.

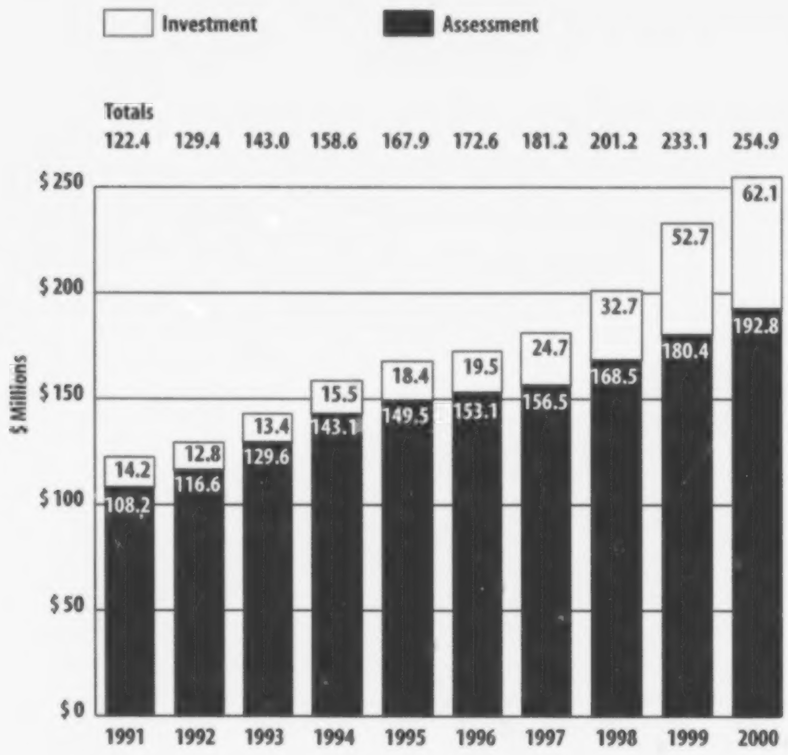
1999 Liabilities increased $17.4 million following Bill 90 and adjustments to the 1998 chronic pain estimates. Bill 90 adjustments relate to chronic pain, reinstatement/extension of survivor benefits, and reinstatement of Amended Interim Earnings Loss benefits.

Fig 3.15 **Benefit Liabilities and Claims Payments (1991-2000)**

($ millions)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Beginning Liabilities	531.46	572.11	611.89	632.52	579.97	617.63	662.54	740.18	823.90	890.55
Present Value Growth	41.90	32.46	25.42	24.36	39.39	42.61	41.71	40.42	58.58	63.68
Actuarial Adjustment (Experience)	–	8.21	(2.21)	2.24	(0.89)	(29.80)	(0.40)	3.32	4.55	18.59
Actuarial Adjustment (Other)	–	(7.68)	–	(72.36)	–	40.37	28.81	40.20	17.41	–
Incurred Cost	88.43	97.99	91.24	81.13	79.80	72.43	75.76	73.51	74.62	81.40
Discount Rate Adjustment	N/A	0.66	0.50	0.20	(0.87)	0.19	0.23	–	(0.40)	(0.60)
Claims Payments	89.68	91.86	94.32	88.12	79.77	80.89	68.47	73.73	88.11	98.62
Ending Liabilities	572.11	611.89	632.52	579.97	617.63	662.54	740.18	823.90	890.55	955.00
Discount Rate (%)	4.00	4.00	3.00	4.75	4.75	4.04	3.50	3.50	3.50	3.50
Payment Growth (%)	–1.00	2.43	2.68	–6.57	–9.48	1.40	15.35	7.68	19.50	11.93

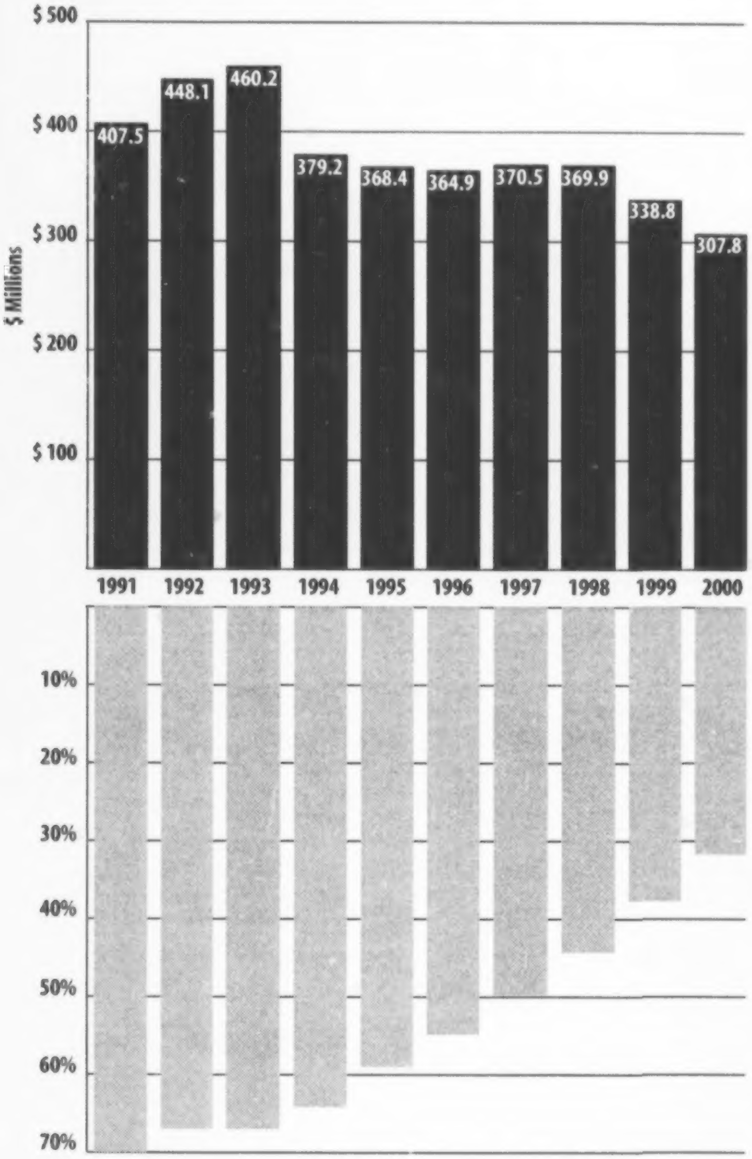
During the decade, the amount of assessment and investment revenue has increased.

Fig 3.16 **Assessment and Investment Revenue in $ Millions (1991-2000)**



The amount and percentage of the unfunded liability decreased during the decade. The unfunded liability today continues to exceed $300 million.

Fig 3.17 **Unfunded Liability in $ Millions and Percentages (1991-2000)**[135]



Since the legislative and administrative reforms of 1995, the distribution of $1.00 of assessment revenue for rated employers, accounting for investment income, has been as follows.

Fig 3.18 **Dollar of Revenue Summary (1995-2000)**

	1995	1996	1997	1998	1999	2000
STD	0.24	0.20	0.14	0.14	0.14	0.15
LTD	0.26	0.27	0.34	0.29	0.25	0.24
Survivor	0.03	0.02	0.02	0.01	0.02	0.02
Health Care	0.10	0.09	0.08	0.07	0.08	0.09
Rehabilitation	0.02	0.02	0.01	0.01	0.01	0.01
Total (Current Injury Costs)	0.65	0.60	0.60	0.53	0.50	0.50
Legislated Obligations (WCAT, WAP, OHS)	0.01	0.02	0.02	0.04	0.03	0.05
WCB Administration	0.13	0.13	0.13	0.12	0.13	0.13
Actuarial Adjustments to Benefit Liabilities	(0.01)	0.09	0.22	0.02	0.03	0.12
Growth in Present Value of Benefit Liabilities	0.32	0.35	0.33	0.29	0.39	0.40
Adjustment for Chronic Pain Benefits	–	–	–	0.29	0.12	–
WCB Employee Future Benefits	–	–	–	–	–	0.02
Investment & Other Income	(0.20)	(0.21)	(0.25)	(0.29)	(0.40)	(0.41)
To Reduce Unfunded Liability	0.09	0.03	(0.04)	0.00	0.21	0.19
Totals (rounded)	**$1.00**	**$1.00**	**$1.00**	**$1.00**	**$1.00**	**$1.00**

In the five years 1996 to 2000, the unfunded liability has been reduced by $60.6 million. This is 7.1 per cent of the total assessment revenue of $851.3 million for the period. It is 31.6 per cent of the total investment revenue of $191.7 million for the period. Steady annual increases in the growth of the present value of future benefit liabilities, legislated benefits and actuarial adjustments have absorbed most of the surcharge on assessment rates.

The board cautioned in its 2001 funding strategy that: "It is important to realize that, while the financial position has significantly improved over the last six years, there are still ten years remaining before the Workers' Compensation Board achieves the overall goal of financial stability and full funding."[136] The June 19, 2001 funding strategy projects surpluses and a reduction of the unfunded liability by over $42 million in 2001 and over $30 million for each year until 2010.[137] This is the average for 1999 and 2000, the best experience the fund ever had. At half this level, fully funded will be reached by 2020.

These amounts will have to be revised downward. It is probable that in 2002, for the first time since 1995, the estimated date for retiring the unfunded liability will have to be extended rather than shortened. At the end of 2001, the unfunded liability will likely be at, or slightly below, $300 million on a total benefits liability of $1 billion or 30 per cent unfunded.

Short-term benefit costs rose and investment revenue declined in 2001. Current optimistic projections based on "stable claims experience, favourable payroll growth, reasonable investment returns and no major liability adjustment" are that, with maintaining an average assessment rate of $2.54, the Accident Fund will be fully funded between 2015 and 2020.[138] This will still be ahead of the original 1995 funding strategy.[139]

3.14 Persons Responsible for Workers' Compensation in the 1990s

The workers' compensation program has endured and continued since 1915. Employers and injured workers have an ongoing relationship with the program, sometimes for life. Responsible ministers, legislators, board and tribunal members and employees, workers advisers and agency leaders come and go, but employees, injured workers and employers continue to depend on the program and the agencies entrusted to administer it.

One feature of the workers' compensation program in the 1990s has been the constant change of persons who have to learn about, guide, administer and deliver the program.

Fig 3.19 **Historical Table of Persons Responsible for Nova Scotia's Workers Compensation (1989-2001)**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Premier	John Buchanan	Roger Bacon	Don Cameron		John Savage				Russell McLellan		John Hamm		
Minister of Labour	Ron Russell	Leroy Legere		Tom McInnis	Jay Abbass		Guy Brown	Manning MacDonald	Gerald O'Malley	Russell MacKinnon	Ron Russell	Angus MacIsaac	David Morse
Minister of Justice	Tom McInnis	Joel Matheson			Dr. William Gillis			Jay Abbass	Alan Mitchell	Dr. Jim Smith	Robbie Harrison /Michael Baker		
DM Labour	Hugh Macdonald				Innis Christie		Gordon Gillis	George Fox		Kevin McNamara			
DM Justice	Bill MacDonald				Gordon Gillis		Bill MacDonald	Gordon Gillis				Doug Keefe	
Events – Legislative & Policy	$2.5 million payment to WCB for pre-1975 pensions	Bill 99 introduced	Bill 99 tabled	Bill 283 eliminates 3-day waiting period; part time Board of Directors appointed; permanent impairment rating system discontinued			Supplementary Benefits Program	New Workers' Compensation Act; earnings loss replacement; compensation based on net; chronic pain; waiting period; experience rating system		Legislature Select Committee struck; report released; WCB partners with CCRA	Bill 90 proclaimed		Review Committee constituted to conduct review
Events – Judicial & Other		Hayden and MacKay Decisions; Select Committee hears Bill 99 input		Westray Mine disaster	Cost Driver Study (Peat Marwick); discussion paper on calculation of benefits	Murray Report on chronic pain	Discussion paper on chronic pain	WCAT & WAP set up; Auditor General's report	Doward Decision	Injured workers occupy legislature; Auditor General's report		Laseur and Martin	Laseur decision appealed to Supreme Court of Canada

Fig 3.19 **Historical Table of Persons Responsible for Nova Scotia's Workers Compensation (1989-2001)**

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
WCB Chair	RJ Allen			Dr. Robert Elgie				Innis Christie					Dr. Oscar Wong Acting Chair
Deputy Chair	James Vaughan, Commissioner						John Bishop					Dr. Oscar Wong	
WCB CEO				David Stuewe									
Worker Members				Wally Power, Norman Robar, Charles Weir	Jim Gill		Roberta Morrison	Ben Chisholm		Gary Penny	Jim Neville	Charlene Long	
Employer Members				Barry Wark, James Sapp, Bill Reid			Gary Dean			Elwood Dillman		James Melvin	
Public Members							Innis Christie		Dr. Oscar Wong, Basil Kilgour			James White, Paul LeBlanc	
Appeal Board Chair	James Vaughan				Linda Zambolin								
WCAT Chair								Judith Ferguson			Katherine Carrigan		
WAP Director				Anne Clark									

4. Coverage – Scope and Nature

4.01 The Goal – Universal, Compulsory Coverage

The future integrity and effective administration of the workers' compensation program requires a stepped approach to simplifying and expanding coverage with an ultimate goal of universal coverage.

Universal, compulsory coverage, with all workers eligible for the same benefits, is a foundation principle of workers' compensation in Canada.

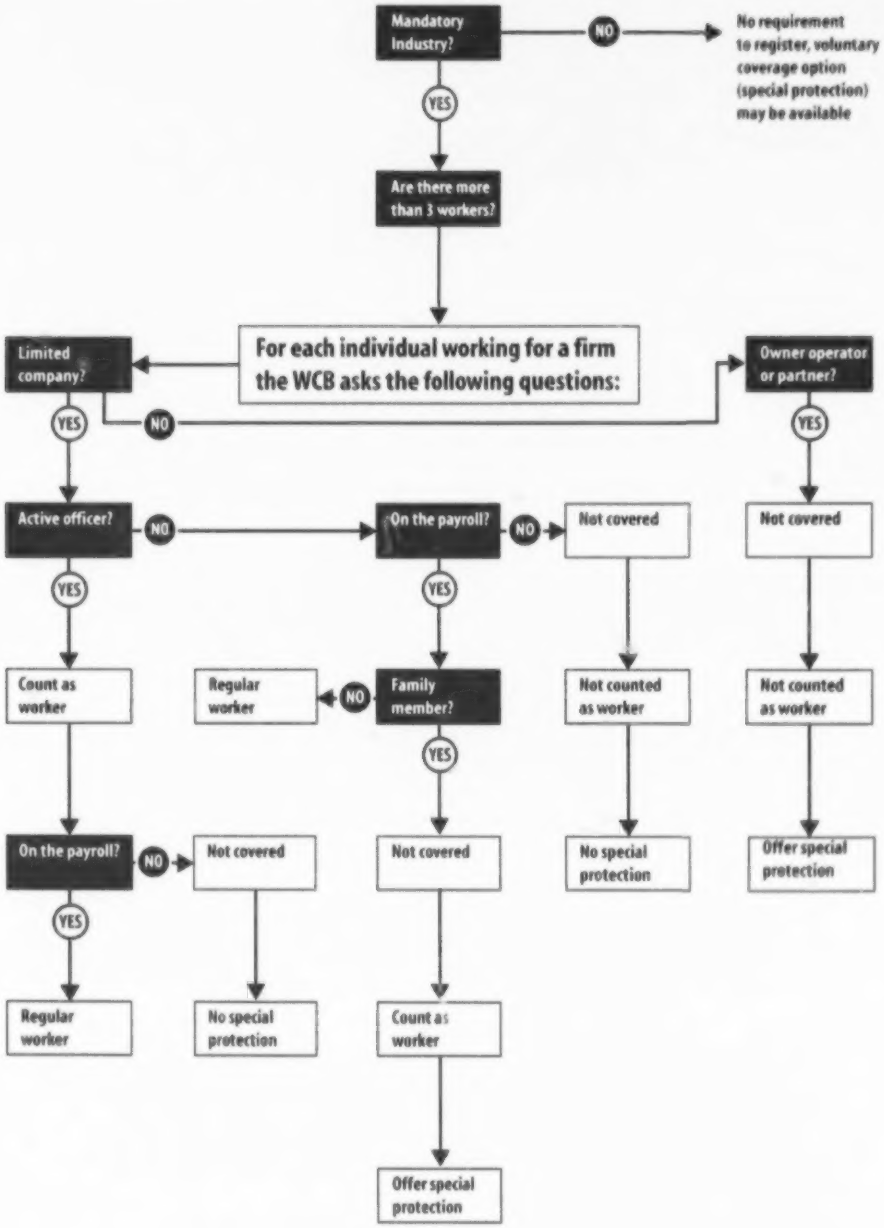
In 1913 Sir William Ralph Meredith, the Canadian father of workers' compensation, considered mandatory coverage especially important for smaller, less stable, industries and employers so that there is "certainty that the injured workman and his dependants shall receive the compensation to which they are entitled."[1] Individual employer or worker choice was not to be a feature of the public system. Public policy considerations were to determine the extent of compulsory coverage.

In 1915 Nova Scotia followed the Ontario lead by becoming the second Canadian province to pass a workers' compensation statute. The responsible minister told the House of Assembly the guiding principle was that "industry rather than the individual workman should bear the hazard of protection and also that there should be afforded the largest amount of compensation possible with as little litigation as possible."[2]

The statute divided compulsorily covered employers into two groups- individually liable or self-insured employers (railways, municipalities, telephone and navigation companies) and collective liability employers. Several key industries were excluded from coverage – farming, fishing, lumbering, wholesale, retail and domestic service.[3]

Today the statute still does not cover all workers and employers in all industries. Coverage is a patchwork quilt with no truly discernible logic and a great deal of history and politics shaping the pattern.

Fig 4.1 **Current Framework for Compulsory Coverage**


Mandatory Industry?
NO
No requirement to register, voluntary coverage option (special protection) may be available
YES
Are there more than 3 workers?
For each individual working for a firm the WCB asks the following questions:
Limited company?
YES
NO
Owner operator or partner?
YES
Active officer?
NO
On the payroll?
NO
Not covered
Not covered
YES
YES
Count as worker
Regular worker
NO
Family member?
Not counted as worker
Not counted as worker
YES
On the payroll?
NO
Not covered
Not covered
No special protection
Offer special protection
YES
Regular worker
No special protection
Count as worker
Offer special protection

Of more immediate concern is the fact that the approach to compulsory coverage is excessively complex. Certain industries are explicitly included.[4] Certain industries are explicitly excluded.[5] Within included industries, certain classes of workers are excluded.[6] Within included industries, certain classes of employers are excluded.[7] Certain other workers within included industries are excluded.[8]

Over the decades, there have been repeated recommendations for Nova Scotia to move toward universal, compulsory coverage.[9] In recent years, however, the trend has been in the opposite direction.

From 1997 to 1999, the Workers' Compensation Board reported that the statute provides coverage to "approximately 70 per cent of employed workers in Nova Scotia."[10] In 2001, the board reported the extent of coverage is "approximately 64 per cent."[11] In 1999, Nova Scotia had the fourth lowest scope of coverage in Canada. In 2001, it had the lowest.

Fig 4.2 **Extent of Coverage in Canadian Provinces**[12]

1999

Man	Sask	Ont	**NS**	Alta	NB	PEI	Nfld	BC	PQ
63.0%	65.4%	65.5%	**66.7%**	74.4%	80.1%	82.8%	84.9%	91.3%	94.7%

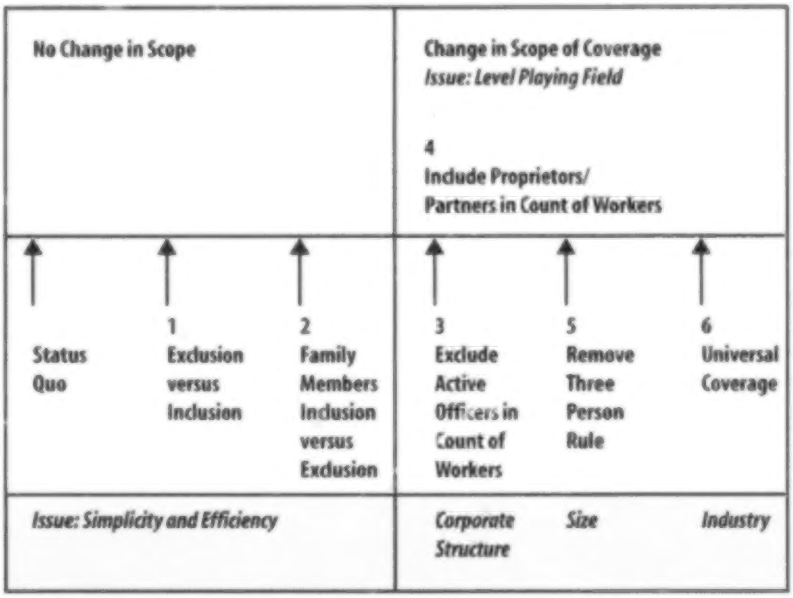
2001

NS	Ont	Sask	Man	Alta	NB	PEI	Nfld	BC	PQ
64.3%	65.5%	65.9%	70.0%	74.4%	80.0%	82.8%	84.9%	91.3%	94.7%

New Brunswick has 80 per cent coverage with a three-worker-rule exemption. No other province has a minimum number of workers limiting compulsory coverage.

The committee has concluded there should be a stepped approach to achieving universal, compulsory coverage. Six possible steps graduate from low to high impact.

Fig 4.3 **Stepped Approach to Extension of Coverage – Low to High Impact**[13]

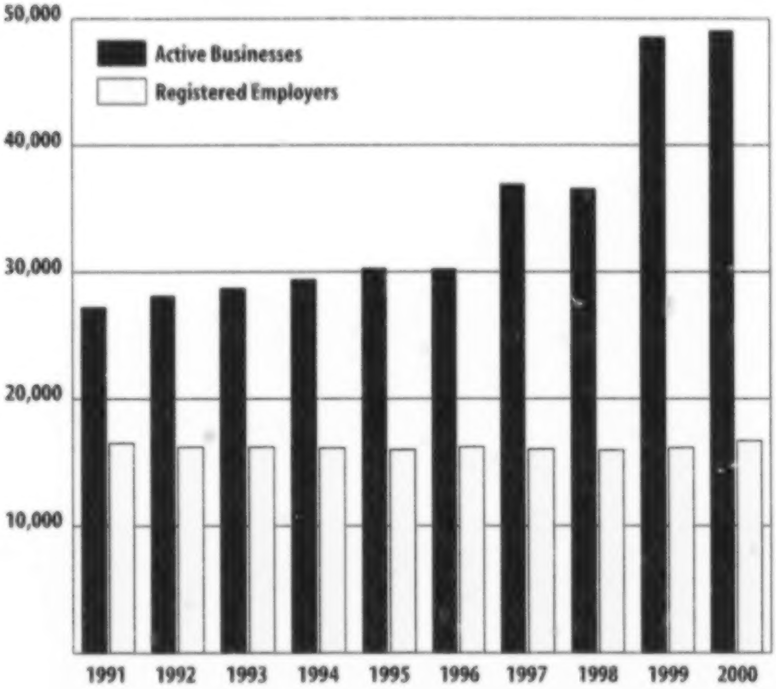

No Change in Scope
Change in Scope of Coverage
Issue: Level Playing Field
4
Include Proprietors/ Partners in Count of Workers
Status Quo
1
Exclusion versus Inclusion
2
Family Members Inclusion versus Exclusion
3
Exclude Active Officers in Count of Workers
5
Remove Three Person Rule
6
Universal Coverage
Issue: Simplicity and Efficiency
Corporate Structure
Size
Industry

As discussed later, the committee recommends steps 1, 2, 4, 5 and 6.

4.02 Population, Employment and Job Trends

In the past 10 years, the number of businesses in Nova Scotia has increased by almost 45 per cent. In contrast, the number of businesses registered with the Workers' Compensation Board has been virtually unchanged. In 2000, there were 32,379 businesses excluded from coverage. Their employees were not compulsorily covered.

Fig 4.4 **Active and WCB Registered Businesses (1991-2000)**[14]



Population, employment and job trends are critical to the extent of future coverage and the continued viability of the workers' compensation program.

In 2000, the Nova Scotia population was 940,998 (49 per cent male and 51 per cent female). The largest age group (150,845) was between 40 and 49 years old.[15]

The total employed population (full-time and part-time) was 419,500. The nature of job tenure has changed over the past decade. Of the 419,500 persons employed, 341,200 were employed full-time and 78,300 were part-time workers.

The employment of women has increased in the past decade. There was a 14.7 per cent increase in the number of full-time women workers and an 11.3 per cent increase in the number who worked part-time.[16]

The number of self-employed persons grew steadily throughout the decade, peaking in 1998 when 60,500 people considered themselves self-employed.[17] The slight drop towards the end of 1999 may have been the result of a strengthening economy. The mix of full and part-time jobs was tilted toward part-time jobs in 1997.[18]

The majority of Nova Scotia businesses are small. More than 72 per cent have fewer than five employees. With current data, it is not possible to determine exactly how many businesses have fewer than three employees and are, therefore, excluded from compulsory coverage.

In the past century, the Nova Scotia industrial base has changed from largely primary industry to predominantly services. Workers' compensation coverage is not keeping up with this long-term trend. Growth sectors are often exempt from coverage. The fastest growing sectors in the past decade are

- management and supervisory services (up 9,000 employees)
- health care and social services (up 7,400)
- professional, scientific, technical services (up 6,000)
- accommodations and food services (up 6,200).

Except for the inclusion of aviation, there has been no significant change in the industries compulsorily covered for many years.[19]

Nova Scotia and Alberta are the only provinces that do not compel coverage of the finance and insurance industries. The board estimates 20,000 workers are employed in these industries. Sixteen employers are voluntarily covered and included in the rate group with the lowest assessment rate – $0.53 per $100 of assessable payroll.

The key trends in the current Nova Scotia labour market are

- increased service industries employment over the decade (38,600)
- retail trade has the largest number of service sector employees
- no employment growth in goods producing industries
- many new jobs are part-time or casual positions
- most new jobs require computer skills[20]
- inflation and wage gains are expected to be low during the next two years.

4.03 Importance of Jobs and Changing Work Relationships

While the nature of workplaces has been changing and will continue to change, the importance of jobs and income from jobs for individuals and families has not changed. Public programs like workers' compensation continue to be of vital importance to workers and employers.

For most workers, their jobs have become less secure and their work has become more intense. Increased competitiveness, easing of trade restrictions and fewer public resources have reduced the number of workers and increased the pace and/or the demands of work through lean production. Many skilled or essential workers are working longer hours. At the same time, the increasing number of employees (who are not employed in the employer's core function) are subject to having their work contracted out locally or internationally.

The 24/7 pattern-24 hours a day and 7 days a week-has moved from process industries to manufacturing and service and retail industries. It is making hours of work more variable and less sociable. Full-time, year-round jobs paying at or above the average industrial wage are becoming scarcer.

There has been an increase in the incidence of self-employment and part-time, casual or contingent employment relationships. The number of low-paying jobs has increased while the number of high-paying jobs has decreased. What were once exceptional working relationships – part-time, temporary, casual, on-contract, self-employed and working through temporary help agencies – have become normal jobs for many workers.

In these working relationships, protection against loss of livelihood is not, and will not be, based on employer-paid benefits. The workers will not have workplaces that provide privately insured coverage. They will not qualify for any coverage at a workplace with which they have a temporary relationship. They will not have continuity of coverage as they move from job to job.

These workers are more dependent than full-time employees on public programs to protect them and their families against an inability to earn an income because of unemployment, old age, sickness and disability. Most are left out if they are dependent on a workplace to provide protection. They are often disadvantaged if the public, social insurance programs provide incomplete or inadequate coverage.

Very few workers have the foresight or can afford to purchase private insurance. There is no available data on how many excluded employers provide private insurance or self-insured coverage for their employees. There is no available data on how many workers purchase private insurance for themselves and their families.

These trends in the workplace make it difficult for some workers to gain protection against loss of livelihood. They increase the challenge for injured workers to return to pre-injury jobs with pre-injury employers and for disabled workers to successfully find jobs that will meet or exceed their pre-injury earnings. These trends also increase inequality of benefits based on pre-injury wages among injured workers.

4.04 Excluded Unless Expressly Included Except if Expressly Excluded

The current approach to compulsory coverage is that the cabinet prescribes whether the statute is to apply to an industry and whether its workers are to be covered. Cabinet may exclude industries, classes of workers employed in covered industries and some employers and all their employees within industries it has included.[21]

Many industries are expressly covered and some are expressly excluded. Several classes of workers and employers in included industries are excluded.[22] The inclusion and exclusion of each industry, employer and class of workers has a distinct story rooted in history and the circumstances at the time when the public policy and political decision to include or exclude was made.

Municipalities are expressly covered,[23] but their police force and fire department members are excluded.[24] Some industries are excluded, but the same work is covered if it is carried on as part of another industry, unless it is carried on as a separate business or undertaking.[25] Other excluded work continues to be excluded if it is carried on as part of a covered industry.[26]

Over the decades, some industries have been included and later excluded. For example, fishing was excluded and then included and then covered by special legislation.[27] The lumber industry has been singled out for special treatment.[28] In the case of these industries, high-hazard workplaces and accident and claims experience strained the program. Other employers were not willing to share in collective liability with the fishing and lumber industries and the government was not willing to become the payor of last resort without reducing benefits.

Under the current approach, new or difficult to define industries are *not* automatically covered. Over time, the approach of listing included industries and the complexity of the coverage rules makes adjudication of registration requirements more difficult and creates uncertainty for business and workers. New and emerging industries may not be listed in either included or excluded industries.

The common approach to coverage across Canada is to start with the presumption that all industries are included and to have one list of excluded industries. One list is easier to interpret and administer. One list enables businesses to know where they stand without seeking an interpretation by the Workers' Compensation Board. The harmonized payroll reporting the board has achieved with Canada Customs and Revenue Agency[29] makes reporting, paying and interacting with the board much easier than it has been, or is, in other provinces. Adopting a presumptive inclusion approach will enable simplified business registration through the board's partnership with the Nova Scotia Business Registry.

Adopting a presumption of inclusion with one list of excluded industries does not mean a change to the current scope of coverage. The list of excluded industries can capture all currently excluded industries. As illustrated in the diagram of a stepped approach to coverage (Fig 4.3), changing to a presumption of inclusion with one list of excluded industries, provides simplicity for business and enables greater efficiency in board administration.

Review Topic 9
In light of the emergence of new industries including for example technology and communication, is there a need to clarify which industries are subject to manadatory coverage under the act? If so, how should this be accomplished?

Response
Yes. By amending the statute to make coverage compulsory for all industries unless excluded by cabinet regulation.

4.05 **Three-Worker Rule**

One overarching exclusion of a class of employers is the three-worker rule. "Every business or undertaking is excluded from the application of the act until at least three workers are at the same time employed in the business or undertaking."[30]

In 1981, a select committee of the legislative assembly favoured universal workers' compensation coverage. It recommended a presumption in favour of coverage. Exclusion would be the exception based on narrow grounds such as "administrative impossibility or other factors." It favoured reducing the number of employees required before mandatory coverage to one from three.[11] The 1998 select committee "strongly" recommended universal coverage in all industries, except agriculture, for employers with more than three employees.[12]

This committee heard about the complexity of the three-worker rule in industries, such as construction. Both the Carpenters' Union and the Construction Association of Nova Scotia voiced concern that the rules should be simplified and all workers should have coverage.

The construction business has changed dramatically in recent years. The sophistication of the market players, perhaps more than rules and regulations, has impacted the extent of workers' compensation coverage. There is a clear concern for safety and coverage in a market dominated by joint ventures, public-private partnerships, subcontractors and trade specialists.

General contractors will not allow persons without coverage or clearance certificates on their work sites.[13] The statute provides for joint contractor liability.[14] Employers who are not registered, but operating in a covered industry, are deemed to be workers of the principal and must be included in the principal's assessment remittance.

Some contractors insist trades people obtain their own registration number and obtain their own workers' compensation coverage. Others may determine a worker is not their "employee" but, for the purposes of the job, will deduct seven per cent or more from their payments to cover the workers' compensation costs.

The committee heard how difficult it can be to determine whether someone is an "employer" or an "employee." The traditional indicators (providing the "tools" for the workplace; setting standard hours; providing a level of supervision; whether one employs others in similar positions) do not fit easily into the construction setting and many other contemporary working relationships.

The Forest Products Association of Nova Scotia submitted it would like to see the protection of family members who work for a small business clarified and supported the concept that *all* employees and employers involved in the forest industry be covered for workers' compensation.

The Canadian Manufacturers and Exporters agreed that the time had come for *all* employers and employees to be covered for workers' compensation. This view is the consensus of most of the labour organizations appearing before the committee, notably the Nova Scotia Federation of Labour, the Nova Scotia Government Employees' Union and the Nova Scotia Nurses' Union.

Some of the primary concerns are:

- How can injured workers be protected from income loss if a company or proprietor goes bankrupt?
- Is a worker in a sole proprietorship better able to handle income loss from accident or injury on the job than one who works in a larger company?
- Do the risks of injury and illness lessen with the size of the organization?
- Who should cover the cost of insurance?

There is a growing consensus, not apparent when Bill 90 was before the legislature, that the "benefits" of the three-person rule should not be extended to any employer.

Recommendation

Repeal the three-worker exclusionary rule.

4.06 Family Members at Home Should Not Be Treated Differently

A member of the family of an employer or the family of a director of a corporation, employed by the employer or corporation and living with the employer or director as a member of that person's household is not counted as a worker, unless the person applies to be covered.[16]

This exclusion is overly complex and fraught with uncertainty. Who is a "member of the family"? What constitutes "living with"? What is the "household"? Why is the worker not covered while living within the household, but covered the moment he or she lives elsewhere? And so on.

At a minimum, the presumption ought to be that the person is covered, unless there is an application for exclusion. Shift the burden so workers have coverage unless they opt out.

There is no reason to treat family-member workers living in the household differently than those who do not, or differently than other workers. Each can be devastated by an injury without coverage. For the family-member worker living in the employer's household, a serious injury can also devastate the employer family.

Some small businesses may employ household members to split income for taxation purposes or to enable household members to accrue Canada Pension Plan benefits, establish eligibility to make registered retirement savings plan contributions or for other reasons. This is not a reason to exempt them from the protection of workers' compensation.

Recommendation

Extend coverage to all family members who are workers, regardless where they live.

4.07 Organizational Structure Should Not Be a Factor

An employer cannot be a "worker" under the statute.[36] Consequently, individuals operating unincorporated business (proprietors and partners) are considered to be employers and are not counted as workers for the three-worker rule. At the same time, active officers of a limited company who are working owners on the payroll are counted.

Some working owners may wish to draw income by way of dividends, rather than salary, perhaps to increase the net income of the company to use available investment tax credits. To maintain workers' compensation coverage, the owner may feel compelled to draw income as salary, rather than dividends.[illegible] The board does not require the owner to draw a salary, but only insured earnings are covered in the event of an occupational injury or illness.

Coverage based on organizational structure can have unwarranted competitive consequences. There is no sound policy reason for this distinction. The workplace hazard is no greater because a business chooses to incorporate. The workers' compensation program should not provide incentives to carry on business through one organizational structure rather than another.

This distinction should be eliminated. Proprietors and partners should be counted as workers on the same basis as active directors on payroll and all should have compulsory coverage.

Review Topic 8
Should the benefit that sole proprietorships enjoy in respect of the "3-worker" rule be extended to apply to incorporated firms of the same size?

Response
No. Eliminate the distinction and treat sole proprietors and partners the same as active directors on payroll.

4.08 Casual Employees and Working Owners

The cabinet can order that students be admitted to coverage.[illegible] No order has ever been made. The board can admit students on the application of an educational facility.[illegible] The board has not received an application. The board has received inquiries from hospitals where student nurses, medical students and others are often working in practicums, but not necessarily being paid. The board has not extended coverage in these situations.

Casual employees are covered by the workers' compensation program if their employer is registered with the board. If the employer is excluded, then its casual employees are not covered.

Certain casual employees, when employed by an employer in a covered industry which employs three or more employees, are not required to be covered.[40]

Working owners are not compulsorily covered.[41] They can register for voluntary coverage. An "active officer, director, or manager" of an incorporated company who is not on the payroll, is still considered a worker for the purposes of "counting" employees.[42] For many companies, the determinative number is two employees plus the "working owner." The theory behind this "counting" is to protect the workers in small businesses where an owner may not draw a salary, but takes out retained earnings or takes shares in the corporation instead of a salary.

Review Topic 6
What is the status and coverage of casual employees and working owners? Are these coverages appropriate?

Response
The status and coverage described above are not appropriate. Casual employees and working owners are no less likely, and perhaps more likely, to suffer work-related injuries and diseases and require the benefit of coverage.

4.09 Optional Coverage – Self-employed and Others

Nova Scotia has a large self-employed sector (about 20 per cent).[43] Self-employed workers are not covered and cannot voluntarily choose to be covered.[44]

The statute expressly includes some industries and workers and expressly excludes others. Still others are not mentioned. The board extends voluntary or optional coverage to persons wishing to be covered, unless they are expressly excluded.[45] The board cannot provide optional coverage to those in industries expressly excluded.[46] It could under the former statute. Examples of persons expressly excluded are taxi drivers, barbers and funeral workers.[47]

Through optional coverage, the board, in effect, sells insurance to persons who have the choice to purchase coverage from either the board or a private insurer. In some circumstances, the choice is limited to the board because a person is obliged to have coverage by the program as a condition of tendering or performing work on a site for an owner or contractor.

This optional coverage, called special protection coverage by the board, can be purchased by self-employed proprietors, partners, family members of an employer living in the employer's household[48] and others. This is a revolving part of the board's business.

Fig 4.5 **Special Protection Coverage (1992-2000)**

Year	Number	Premiums Billed	Accidents	Benefits Paid
1992	1,112	$666,347.45	101	$462,456.69
1993	1,127	738,980.77	135	684,163.57
1994	910	645,390.09	109	493,714.69
1995	622	437,283.03	68	468,242.92
1996	776	519,907.80	69	495,514.53
1997	975	519,262.19	82	436,084.61
1998	1,092	593,119.70	68	480,433.74
1999	1,130	637,738.15	71	553,383.12
2000	1,714	1,016,910.08	83	528,894.48

Recommendation
Amend the statute to permit the board to extend special protection coverage to all excluded persons.

4.10 Waiting Period

The board cannot pay compensation to an injured worker for "a period of time during which the worker would have received remuneration from the employer equivalent to two-fifths of the worker's net average weekly compensation."[49] However, when "a loss of earnings results from an injury for more than five weeks", the board shall pay the amount deducted to the worker.[50] The amount deducted is two-fifths of the compensation benefit payable. The wage loss for the injured worker is higher. The injured worker is entitled to health care benefits from the date of injury.[51]

Fig 4.6 Waiting Period Deduction Payments After Five Weeks (1996-2000)

	1996	1997	1998	1999	2000
Total	$203,551	$298,596	$319,593	$370,452	$420,108

Approximately 25 per cent of the reimbursements after five weeks are made to employers.

The adoption of a waiting period as a limitation on coverage was raised in the *Proposals for Reform Discussion Paper* in 1994[52] and implemented when the new act was proclaimed in 1996.

Although the stated purpose was to encourage return to work, waiting periods have existed in Nova Scotia before this was a goal of the workers' compensation program. In 1915, for example, the waiting period was seven days.[53]

This limitation on coverage existed only in New Brunswick and Nova Scotia until Prince Edward Island introduced a three-day waiting period in recently proposed amendments to its *Workers' Compensation Act*.[14]

A New Brunswick study estimated that, because of the waiting period, 12 per cent to 20 per cent of all accidents were not reported. It concluded 1.505 per cent to 2.2079 per cent of unreported accidents would have been serious enough to require a loss of time from work.[15]

The Nova Scotia board estimates injured workers in Nova Scotia lose an estimated $308,851 to $1,235,405 per year.[16]

Initially, the waiting period was introduced with a prohibition against employers paying their employees anything in the two days or paying a "top up" of any kind while their employees were on compensation.[17] This upset both employers and workers and was repealed in 1999.[18]

Concerns about the waiting period heard throughout this review process include:

- It is an unfair penalty against workers and was one of the reasons the Halifax Regional Municipal police and firefighters left the workers' compensation program for a private insurance plan.
- The two-fifths waiting period is difficult to calculate and difficult for employers and employees to understand.
- While the waiting period may have initially discouraged claims, normal claims patterns soon re-emerged.
- The waiting period can result in under-reporting of accidents and use of sick time instead of workers' compensation benefits.
- There is a concern that recovery times may be extended beyond five weeks to have the two-day waiting period reimbursed.
- The waiting period is not a loss to all workers. Many workers, especially public sector workers, experience no waiting period because of collective agreement provisions or personnel policies.

If a waiting period causes under-reporting of claims, it is directly at odds with the *Occupational Health & Safety Act*, which encourages the reporting of all workplace accidents and near-misses so employers can take corrective action.

There is no method by which the effect of the waiting period on claims behaviour and patterns can be determined. From 1996, there have been many legislative and operational changes and isolating the effect of the waiting period is somewhat speculative. There was a pronounced decrease between 1994 and 1996 in sprain and strain claims, but not in more severe cuts, crushes and other claims. This was not due solely to improved workplace safety.

Assuming the waiting period accounted for one-half the decrease in claims and the remaining half was the result of other changes, and using 1999 as the benchmark to measure costs, the cost of eliminating the waiting period was projected to be 12 cents per $100 of payroll for assessed employers.[69]

Injured workers see the waiting period as an unfair penalty when the accident or illness was not their fault. It is contrary to the no-fault principle of public workers' compensation. Many workers have ongoing commitments they must meet during a waiting period, such as day care costs and monthly parking or transit fees.

A key concern for the committee is the impact of the waiting period on minimum wage workers, who can least afford to be penalized for not working. For these workers, the waiting period is a definite incentive to continue to work regardless of the consequences for their health.

Administrative difficulties in calculating the waiting period result from employers paying benefits to workers during the waiting period and providing "top ups" to workers' compensation benefits. The amounts paid by the employer and the board for the waiting period will often differ. Significant administrative effort is required to reconcile the situation. The difference results from complexity in calculating the waiting period, particularly if the worker is not a five-day worker.

The board provided an example for nurses. When a nurse is injured and loses time from work, the hospital will advance the nurse 15 hours of sick time (or whatever fewer sick time hours the nurse has accumulated) for the first two days of lost wages. This is recorded on the accident report. The caseworker will pay the first 15 hours (or whatever time was paid in advance) directly to the hospital in the first cheque issued. This ensures that the two-fifths deduction after five weeks goes directly to the hospital because in the board's system reimbursement for the two-fifths deduction is paid to the first payee in the sixth week.

In a majority of cases, the payment calculated by the board does not cover the full amount of the deduction. The remainder is deducted from the second cheque, which goes directly to the nurse.

When the two-fifths deduction is reimbursed after five weeks, the cheque for the entire amount of the two-fifths deduction is sent to the hospital because it was the first payee recognized by the board's payment system. The worker may not receive the balance of the reimbursed two-fifths.

The problem arises because the hospital always calculates the two-fifths deduction as though the nurse were a five day worker while the board bases the two-fifths deduction on the days the nurse actually works. For example: If the nurse works 4 x 12 hour shifts in a 7 day period (1 week) the nurse is considered a 4 day worker. If the nurse works 3 days one week and 4 days the next on rotation the nurse is considered a 4 day worker. If the nurse works 4 days one week and 5 days the next on rotation the nurse is considered a 5 day worker. Two-fifths of a 5 day work week = 2 days, while two-fifths of a 4 day work week = 1.6 days. The Committee does not know why the board and hospitals have not been able to adopt a common approach to resolve the problem.

Ultimately there would be less confusion, administrative work and fewer dissatisfied nurses if the board could simply send all cheques to the nurse who could, in turn, reimburse the hospital whatever amount was advanced. This way the nurse and the employer could settle on the amount advanced/reimbursed without the board in the middle.(4)

Changes are needed to simplify the calculation of the waiting period for the board. The committee considers the board is best situated to identify and make those changes.

The more important issue is whether there should be a waiting period at all. Without it, the calculation problem would not exist. Much more significantly, the integrity of the principle of no fault coverage would be maintained. Workers should not suffer (and employers should not benefit from) a wage deductible for work related injuries. Currently, some do and some do not. Generally, the least advantaged workers suffer.

The workers' compensation program and employers are entitled to expect workers to promptly notify employers about all accidents and to report injuries. If they do, an appropriate question is whether the employer or the Accident Fund should pay the injured worker for any wage loss on the day of injury. In six Canadian jurisdictions, the employer is responsible to pay the worker for the day of injury.[61] This responsibility might be an incentive for some to be more vigilant in their health and safety programs and to promptly investigate accidents and injury claims. *It will be an incentive to report all claims.*

Administrative changes are required to accurately calculate the time equivalent to two-fifths of the worker's net average weekly compensation. Any simplification of the calculation should not be to the detriment of individual injured workers. The changes should place timely payment of full compensation to the injured worker ahead of the administrative convenience of the employer or the board. This may place additional administrative cost on the program. Currently, the financial benefit of the waiting period for assessed and self-insured employers substantially outweighs the cost of accurately calculating each waiting period reduction in benefits and fully reimbursing each injured worker after five weeks.

Review Topic 16

Are changes required to simplify the calculation of the two day "waiting period" after the point in time when an accident occurs?

Recommendation

Amend the statute to require the employer to compensate an injured worker at the regular rate of pay for the day of an injury, provided the worker immediately reports the injury. For the day following and subsequent days, the worker is to be compensated from the Accident Fund.

4.11 Chronic Pain

Some workers with compensable injuries and occupational diseases suffer chronic pain. This is pain "continuing beyond the normal recovery time for the type of personal injury that precipitated, triggered or otherwise predated the pain; or disproportionate to the type of personal injury that precipitated, triggered or otherwise predated the pain." It includes some specific diagnosed conditions – chronic pain syndrome, fibromyalgia, myofascial pain syndrome and "other like or related conditions." It does not include "pain supported by significant, objective, physical findings at the site of the injury which indicate that the injury has not healed."[62]

Regardless of the reality, window period injuries, from March 23, 1990 to January 31, 1996 are "deemed never to have included chronic pain."[63] Retroactively, it is deemed there never was a right to compensation for chronic pain for an injury that occurred before February 1, 1996.[64] Finally,

> 10B (c) no compensation is payable to a worker in connection with chronic pain, except as provided in this Section or in Section 10E or 10G or, in the case of a worker injured on or after February 1, 1996, as provided in the Functional Restoration (Multi-Faceted Pain Services) Program Regulations contained in Order in Council 96-207 made on March 26, 1996, as amended from time to time and, for greater certainty, those regulations are deemed to have been validly made pursuant to this act and to have been in full force and effect on and after February 1, 1996.[65]

In 1996, linking to its 1993 underlying philosophy of early assistance for recovery and re-employment[66] and relying on recent studies,[67] the board concluded the "principles and recommendations asserted for non-specific low-back pain would apply equally to chronic pain in other parts of the body."[68]

The board identified three options for prevention, management and compensation of chronic pain.

1. Do as it had been doing. Close the claim and discontinue compensation when there is no objective medical evidence of a continuing compensable organic injury resulting in wage loss. No Permanent Medical Impairment (PMI) would be given and no vocational rehabilitation assistance would be provided.
2. Decide if the injured worker is a candidate for a time-limited pain management program. During the program, the worker would receive special rehabilitation assistance.[69] No PMI rating or vocational assistance would be given to the worker.
3. Pain complaints not supported by evidence of a continuing organic impairment would entitle the worker to continuing wage loss benefits, a PMI rating and consideration for vocational rehabilitation assistance.

Option 2 was adopted and the board developed a voluntary, time-limited, two-phase chronic pain program and policy.[70] The focus was to teach injured workers how to deal with their pain. The first phase targets prevention of chronic pain development. The second phase targets management of pain and is limited to four weeks. The program was to be piloted for three years and evaluated annually.[71] It became effective February 1, 1996.[72]

In April 1999, just as the three-year pilot period passed and before it was evaluated, the program was enshrined in the statute.[73] Its operation was suspended from February to November 2000 following decisions of the Workers Compensation Appeals Tribunal.[74]

In 1996, the board expected 1,032 injured workers to be referred each year to Phase 1 of the program and, of them, one-half or 516 to be referred to Phase 2.[75] It estimated the annual cost at $10,565,000.[76] This was only $73,000 less than the estimated current costs of chronic pain claims with duration greater than 15 weeks and no PMI. The savings were to be up to $2.5 million per year in long-term disability costs. There have been far fewer referrals than expected – 401 for the six years 1996 to 2001. The total cost for injured workers of both assessed and self-insured employers has been $7,274,734 or $1,212,455 per year – one-tenth of the projected cost.

Fig 4.7 **FRP Costing – For All Claims With an Accident Date On or After February 1, 1996**

Accident Year			Actual Volume	Compensation Payment $	Non FRP Healthcare Payments $	FRP Healthcare Payments $	Average Duration (weeks)
1996	**Phase I only**	Self-Insurers	4	49,556	20,472	1,450	36.4
		Regular Classified Firms	50	892,796	431,802	40,808	68.1
	Phase II only	Self-Insurers	1	3,741	1,352	550	9.8
		Regular Classified Firms	18	203,726	122,660	3,568	39.7
	Phase I and II	Self-Insurers	0	0	0	0	0
		Regular Classified Firms	2	12,124	13,582	1,200	32.7
	Total		**75**	**1,161,943**	**589,868**	**47,576**	**31.1**
1997	**Phase I only**	Self-Insurers	5	88,049	63,059	5,060	49.9
		Regular Classified Firms	63	819,983	413,951	46,833	48.2
	Phase II only	Self-Insurers	5	276,312	25,681	3,544	39.1
		Regular Classified Firms	27	66,844	203,078	19,984	40.5
	Phase I and II	Self-Insurers	0	0	0	0	0
		Regular Classified Firms	1	19,272	3,809	1,700	66.6
	Total		**101**	**1,270,459**	**709,578**	**77,121**	**40.7**
1998	**Phase I only**	Self-Insurers	2	21,083	5,755	1,260	27
		Regular Classified Firms	36	488,177	268,926	27,307	49.3
	Phase II only	Self-Insurers	4	51,559	21,601	5,632	37.3
		Regular Classified Firms	38	444,234	203,078	36,027	44.7
	Phase I and II	Self-Insurers	2	26,507	5,529	2,466	37.5
		Regular Classified Firms	18	107,938	68,630	23,017	25.3
	Total		**100**	**1,139,498**	**573,519**	**95,708**	**36.9**

Accident Year			**Actual Volume**	**Compensation Payment $**	**Non FRP Healthcare Payments $**	**FRP Healthcare Payments $**	**Average Duration (weeks)**
1999	**Phase I only**	Self-Insurers	2	25,708	10,818	2,000	32.7
		Regular Classified Firms	6	26,188	23,996	8,500	20.9
	Phase II only	Self-Insurers	2	21,807	11,221	2,400	28.7
		Regular Classified Firms	14	101,969	65,635	12,374	29.2
	Phase I and II	Self-Insurers	3	72,314	23,885	3,775	51.1
		Regular Classified Firms	11	86,987	57,232	9,512	31.7
	Total		**38**	**334,972**	**192,787**	**38,561**	**32.4**
2000	**Phase I only**	Self-Insurers	0	0	0	0	0
		Regular Classified Firms	7	80,580	25,961	4,737	46.3
	Phase II only	Self-Insurers	0	0	0	0	0
		Regular Classified Firms	11	98,958	42,768	11,954	36.7
	Phase I and II	Self-Insurers	0	0	0	0	0
		Regular Classified Firms	5	61,639	25,801	6,185	31.6
	Total		**23**	**241,177**	**94,530**	**22,876**	**19.1**
2001	**Phase I only**	Self-Insurers	1	$3,499	$1,049	$1,083	11
		Regular Classified Firms	35	$208,536	$136,414	$11,974	23.2
	Phase II only	Self-Insurers	4	$27,041	$17,921	$4,367	21.1
		Regular Classified Firms	19	$130,728	$72,621	$8,725	21.2
	Phase I and II	Self-Insurers	0	$0	$0	$0	0
		Regular Classified Firms	5	$31,096	$23,690	$5,816	29.2
	Total		**64**	**400,900**	**251,695**	**31,966**	**17.6**
Totals			**401**	**$4,548,949**	**$2,411,977**	**$313,808**	**29.6**

Fig 4.8 **Average Cost per Referral Under FRP (1996-2001)**

1996	1997	1998	1999	2000	2001
$23,991.82	$20,367.90	$18,087.25	$14,903.15	$15,590.56	$10,696.26

The committee is unable to say whether the program is being used more or less extensively than it should be or if the referrals at either phase are appropriate.

Five physicians from the Pain Management Unit of the Queen Elizabeth II Health Sciences Centre submitted to the committee their current understanding of chronic pain.[77] They say the current board approach creates problems and an injustice for some injured workers. They submit as follows:

> At the Pain Management Unit we have significant experience in the diagnosis and management of chronic pain conditions which develop subsequent to injuries. Many of our patients have been injured in work related settings. It is acknowledged that early intervention subsequent to injury is essential in preventing the development of chronic pain conditions. It is also important to engage individuals in rehabilitation programs with appropriate return to work components. In some cases however, individuals are injured in a way that causes permanent damage.
>
> Chronic pain is now understood to be caused by a neural response to tissue injury. In other words pathophysiological changes take place within the peripheral and central nervous system such that neurons become sensitized, structurally reorganized, and pain defense networks become disinhibited. In these cases, individuals go on to suffer from chronic permanent pain conditions. With the current state of medical science these conditions are incurable, all we can hope to do is to provide individuals with some relief using combinations of pharmacotherapy or various procedures such as nerve blocks and neurostimulatory approaches. Even in these cases the

> relief is only partial, and individuals are left to try and cope or manage with this pain on a day to day basis.
>
> Following injury, a subgroup of individuals will be left with partial or total disabilities which are quite legitimate. In most cases, with appropriate treatment, individuals will recover and be able to return to functional life styles, but in some cases individuals will have been injured severely and permanently enough that they are left with a partial or permanent disability. In our opinion, it is inappropriate and unjust to abandon individuals who have been left with chronic pain subsequent to work related injuries. Indeed the current definition used by the Workers' Compensation Board is problematic.
>
> The Workers' Compensation Board must recognize that there are some individuals who will be left with permanent pain and disability subsequent to work related injuries, and these individuals should be offered appropriate treatment and fair compensation for their losses.

An evaluation of the Function Restoration Program was completed in November 1999. The evaluation concluded the majority of injured workers benefited from the program and the return to work rates were higher than reported in other provinces.[78] The board approved continuation of the program with some administrative changes.[79]

The board's expenditures on the program demonstrate that it is used as a last resort for difficult cases to provide wage replacement continuance for four weeks during which the injured worker receives counselling. We heard from injured workers who attended the counselling to maintain their benefits, but questioned or ridiculed its cost and value.

The committee is surprised at the low numbers of referrals and the low cost of the program. There is a large gap between estimated and actual utilization and cost of the program. There is a gap between the common perception of the number of injured workers being sent to the program and the data supplied by the board.

The committee understands some workers are referred at the one-year anniversary of their claim simply because, under the regulations, a referral cannot be made more than one year after the date of injury.[xvii] Some of these workers require medical tests to obtain evidence to support their claims. Because of diagnostic waiting lists, however, they are sometimes not able to meet the one-year deadline. The worker then uses the appeal process to establish continuing entitlement to benefits. For these workers the referral was inappropriate.

For other injured workers, there is anecdotal evidence that the existence of the program and the definition of chronic pain have altered diagnostic reports to stay away from conclusions that an injured worker has chronic pain.

The committee has no reliable information about the impact of the rehabilitation aspects of the program.

The program applies only to workers injured on, or after, February 1, 1996. The cost per worker referral has decreased substantially (Fig 4.8), as has the medical aid component.

Fig 4.9 **Average Medical Aid (1996-2001)**

1996	1997	1998	1999	2000	2001
$634.35	$763.57	$957.08	$1,014.76	$994.61	$499.47

None of the information the committee has been able to obtain enables us to make a conclusion about the overall impact of the regulations and program or its impact on individual workers. The best we can conclude is that it has had a questionable and minimal beneficial impact. Early diagnosis of chronic pain results in termination of benefits and referral to the program. Diagnosis after one year results in exclusion from the program.

Bill 90 recognized the existence of chronic pain, but denied coverage. For the pre-Hayden group of injured workers the matter has proceeded to the Supreme Court of Canada. Some window period workers received a substantial benefit. Some did not. For workers injured since February 1, 1996, there is no alternative to the program. In other compensation systems, and in the courts, limited compensation is paid for chronic pain after assessing if it is mild, moderate or severe. This is the approach the board first adopted. That approach is consistent with generally accepted principles of compensation.

Review Topic 15

What has been the impact of the *Functional Restoration (Multi-faceted Pain Services) Program Regulations*, and the WCB's chronic-pain program, including its rehabilitation aspects?

Response

Minimal and questionable.

5. Revenue

5.01 Sources of Income

The workers' compensation program has seven sources of income

(1) assessments

(2) self-insured costs and administration fees

(3) investment income

(4) penalties and adjustments charges

(5) recoveries from third parties

(6) recoveries from overpayments, and

(7) occasional payments from government.

There are two distinct groups of employers covered by the workers' compensation program – assessed and self-insured employers. The larger group is assessed employers. They collectively share responsibility for injury and occupational disease. Their assessments, a percentage of their payroll below the maximum assessable wage rate, are the main source of revenue for the program.

Assessments are part of each compulsorily covered employer's total labour costs of doing business and an indirect part of the employee's compensation, like employer insurance premiums for health and welfare benefits and payments to Employment Insurance or Canada Pension Plan. Ultimately, the cost is borne by consumers of the employer's goods and services.

Assessments are intended to generate revenue to pay all current and future costs of accepted claims and legislated obligations of the program to fund the Occupational Health and Safety Division, the Workers Advisers Program and Workers Compensation Appeals Tribunal. Revenue from special optional protection coverage is included in assessments. The money collected today for future claims payments is set aside in the Accident Fund and invested.

The second group of employers is a small number of large employers who have historically insured themselves. They are compulsorily covered by the statute, but have been allowed to be individually liable for their workers' compensation costs.[1]

Self-insured employers pay the board each year for the cost of current claims payments made by the board plus an administration fee for adjudicating and administering the claims of their employees. These fees include an amount to pay for a proportionate share of the legislated obligations.[2]

Self-insured employers are responsible for the future cost of their employees' benefits.[3]

The third source of revenue is income from investing the Accident Fund set aside to pay for future benefits of workers injured in the past.[4]

The fourth revenue source is a small amount of income from reporting and other penalties assessed and collected by the board.

The fifth source is money recovered from persons not covered by the workers' compensation program who cause injury and illness to workers covered by the program.

The sixth source is not new income, but recoveries of past overpayments to workers.

Taxpayers, through the provincial government, in addition to being an employer with employees covered by the program, are the ultimate guarantors of the solvency of the Accident Fund. On occasion, the government has assumed the cost of some newly legislated benefits.[5]

The board collects and passes on levies approved by cabinet to fund industry safety associations. It does not retain any of these funds.

5.02 Assessment Income

The board has broad discretion to classify employers, set assessment rates and collect assessments.[6] It must assess and collect sufficient funds to meet the costs of all claims during the year, the future costs of those claims and administration costs.[7]

Industries and employers in each industry have different injury and claims cost experience. Charging all employers, in every industry, the same rate would respect the principle of collective responsibility, but it would not be equitable. Each industry is expected to pay its proportion of the claims and administration costs.

The board must collect sufficient revenue each year to pay for the year's claims.[8] Most future claims costs are capitalized in the year the claim is accepted. These are compensation benefits, health care costs and rehabilitation costs.

The future cost to administer the claims is not capitalized.[9] The board has identified a one time cost impact of 5 per cent to 7 per cent of future liabilities if provision were made in future liabilities for future administration costs.

> Including this provision will facilitate comparison to other jurisdictions and more accurately match costs to the year of accident. The WCB of Nova Scotia may choose to incorporate this provision in a subsequent year's financial statements. This would be a one time negative impact on the WCB's financial position.[10]

Assessment rates must be set each year to generate revenue to pay current costs and future liabilities of current year injuries, administrative costs and legislated obligations and to reduce the unfunded liability. The targets are set out each year in the board's funding strategy.[11] The board does not include penalty revenue or third-party and overpayment recoveries in its funding strategy.[12]

Past revenue targets had to allow for shortfalls due to rate transition policies. These shortfalls occurred because there were limits on rate increases when the board made the transition from the pre-1996 model to the current rate setting model. As of 2001, all employers have made the transition from the former model to the full rate under the new model.

Currently, there are two shortfalls each year that the revenue targets must take into account. The board has set a 20 per cent limit on baseline rate increases from one year to the next. For 2002, 15,997 (92 per cent) of employer accounts will be at their baseline rate; 646 (3.7 per cent) will be below; and 746 (4.3 per cent) will be above. No employer will be more than 20 per cent above the baseline rate. Less than one per cent (167) will be more than 20 per cent below.[13] This 20 per cent limit on baseline rate increases caused a $2.65 million imbalance or shortfall for 2002. The revenue target must also allow for an imbalance or shortfall of $0.75 million from experience rating in 2002.

Because of these two shortfalls, to meet a revenue target of $164.6 million for 2002, the rate model must set a baseline target of $168 million. ($168m – ($2.65m + $0.75m) = $164.6m)

The base rate includes a 30 per cent surcharge across all industries to reduce the unfunded liability. Therefore, industries with higher rates pay more than industries with lower rates to retire the accumulated, unfunded future liability. Self-insured employers do not share in the collective future liability. Each has its own future liability.

Prior to 1996, the board used Industrial Rating Classifications to group employers into 144 classifications and rate groups. The assessment rate setting model was cost recovery. Many of the rate groups were small and not statistically credible for cost sharing. Because of the accumulated unfunded liability, these employers were subjected to rate-increase shock from 1993 to 1995.

In 1996, the board wanted to introduce individual employer experience rating as part of its rate setting. Experience rating is adjusting assessment rates for individual employers by comparing an individual employer's claims cost (or accident) experience to the average for firms in the same rate group. To do this, the board had to design a new, cost-sharing (not cost recovery) model to set assessments rates. The board's actuary recommended that statistical credibility should be a benchmark for the model.[14] This meant fewer rate groups.

With experience rating, the model currently used by the board modifies collective employer liability at both the industry and individual firm level.

Every employer is assigned to an industrial classification using the Standard Industrial Classification (SIC) code produced and maintained by Statistics Canada. This is a 1980 comprehensive listing of almost all types of industrial undertakings in Canada. The classification structure has 18 divisions segmented into [illegible] major groups and further divided into sub-groups and classes. About 640 of the 850 codes are used by the board.

The SIC code is becoming somewhat outdated and will not be updated. The 1997 North America Industry Classification System (NAICS) is more current for industry classification. The board uses a concordance table in NAISC to allocate SIC codes to employers in newer industrial activities.

When the new rate setting model was adopted in 1996 multiple accounts for single employers were eliminated. A review at the time disclosed that the method of classifying employers who claimed to be involved in different businesses was not applied consistently.[15] There were approximately 1,000 multiple accounts, of which 50 per cent lost their second classification and faced increased costs. This generated several appeals. The new model allows an employer in Nova Scotia to have separate accounts for multiple divisions.[16]

Under the rate setting model, an industry that is responsible for twice the claims cost per payroll dollar of another industry will have an assessment rate twice that of the other industry. Therefore, it is important that each employer is correctly classified and assigned to an industry group that represents the same or similar characteristics and that the board properly allocates claim costs and payroll.

In 1999, the act was amended to provide for the creation of a Rating Review Commission[17] to review the classification system and make recommendations to the board about possible improvements. The commission would *not* have the power to make decisions on individual classifications or rates. The commission has not been appointed.

If individual employers do question whether they have been properly classified and charged the correct assessment rate they can appeal the board's decision. The appeals are heard and decided first by a hearing officer at the Workers' Compensation Board and then by the Workers Compensation Appeals Tribunal. Appeals to the tribunal have increased in 1999 and 2000. The next level of appeal is the Nova Scotia Court of Appeal.[18]

Fig 5.1 Classification and Assessment Appeals (1996-2000)[19]

	1995	1996	1997	1998	1999	2000
Hearing Officer	15	12	20	17	25	15
WCAT	–	0	0	0	10	6

Each industry group should include businesses of the same nature because all firms in the group will be charged the same basic assessment rate. Employers are classified by the industrial activity of the employer and not by the occupations of its workers. Using SIC code numbers, competitors in Nova Scotia are placed in the same industry and in the same rate group and they will have the same base assessment rate.

Between provinces, similar industries may have different rates for any number of reasons – benefits levels, claims experience, industry groupings for statistically credible rate setting purposes, etc. For example, in the licensed and unlicensed restaurant and take-out food industry the comparison of Nova Scotia rates with those of New Brunswick and Prince Edward Island is as follows.

Fig 5.2 **Nova Scotia, NB and PEI Restaurant Rates (1998-2002)**[20]

	Baseline NS Rate	5 Year Ratio of New Injury Cost to Payroll[21]	Cost Index[22]	NB Rate	PEI Rate
1998	$1.49	.003919	0.5918	$1.15	$1.00
1999	$1.44	.003269	0.5727	$1.13	$1.10
2000	$1.34	.002589	0.5238	$1.09	$1.21
2001	$1.33	.002407	0.5198	$1.15	$1.39
2002	$1.37	.002769	0.5828	$1.33	$1.58

Using occupations, rather than industrial activity to classify employers would result in smaller, less statistically credible groups and greater changes in assessment rates from year to year. Classifying employers by occupation would complicate assessment procedures for employers and increase costs. It would require complex guidelines for each occupation.

After grouping employers by SIC code numbers, industries are grouped together. This step combines similar business activities with similar claims cost patterns. An industry grouping must have $400,000 new injury costs in a five-year period to be statistically credible. This is a guideline the board follows, not a published policy. For 2002, the board combined the 640 SIC codes it used into 98 industry groups. Of these 79 per cent (506) are fully statistically credible.

It is at the industry group level that the board projects payroll in setting rates to generate income to meet funding strategy targets. The average assessment rate, as a percentage of the assessable payroll, will determine the assessment revenue target. Accurate industry payroll projections are crucial to achieving targeted income.

At the end of a year, actual, not projected, assessment revenue and actual, not projected, transition and experience rating shortfalls generate total assessment revenue and determine the actual average assessments rate. Although the provisional average assessment rate for rate setting purposes has been set at $2.54 per $100 of assessable payroll for 1995 to 2000[23], the actual average assessment rate has been slightly below or above each year. The board has decided to maintain the average assessment rate at $2.54 until 2004 or, at least, until after this statutory review is completed.[24]

The board has consistently under projected payroll and assessment revenue by a small amount and come close to the targeted average assessment rate.

Fig 5.3 **Comparison of Payroll, Revenue and Average Assessment Rate Actual vs. Projected, 1996–2000**

Year	Projected Payroll	Actual Payroll	Projected Revenue	Actual Revenue	Projected Average Rate	Actual Average Rate
1996	$4,760,000,000	$4,846,100,000	$120,904,000	$121,575,000	$2.54	$2.5087
1997	$4,852,700,000	$5,152,400,000	$123,258,580	$129,503,000	$2.54	$2.5135
1998	$5,121,900,000	$5,472,900,000	$130,096,260	$138,986,000	$2.54	$2.5395
1999	$5,402,000,000	$5,907,300,000	$137,210,800	$152,884,000	$2.54	$2.5881
2000	$5,828,300,000	$6,142,800,000	$148,038,820	$156,815,000	$2.54	$2.5528

The industry groupings are reviewed annually to ensure no single SIC code is unduly influencing a group rate. For 2002, there were five industry group changes. An example of one was splitting the plastics manufacturing group into two industry groups – (1) plastic bags and sheeting and (2) plastics manufacturing (other). For three years the plastic bags and sheeting manufacturers had been the two lowest cost components of the combined group. If left combined, the rate for 2002 would be $3.51 per $100 of assessable payroll. With the split, the 2002 rate for the plastic bags and sheeting manufacturers is $2.61. For the other plastic manufacturers, the rate is $4.80.

The next level of combination is combining the 96 industry groups into rate groups. To be statistically credible, a rate group should have $2 million in new injury costs over a five-year period. The rate groups and trends are reviewed annually with the board's actuary to identify any deviations in cost experience and changes in statistical credibility. There are 35 rate groups for 2002. Before experience rating of individual employers, the 2002 rates range from a high of $10.41 and a low of $0.55 per $100 of assessable payroll.

Fig 5.4 **Assessment Model**

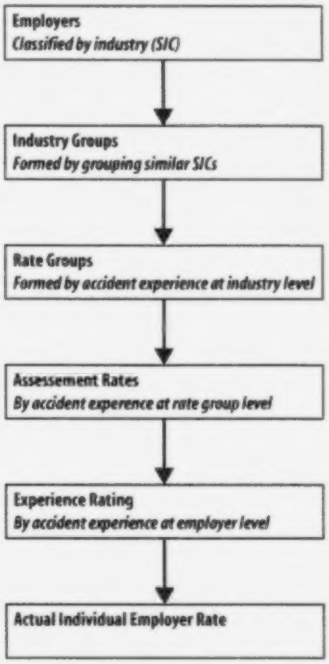

Employers
Classified by industry (SIC)
Industry Groups
Formed by grouping similar SICs
Rate Groups
Formed by accident experience at industry level
Assessement Rates
By accident experence at rate group level
Experience Rating
By accident experience at employer level
Actual Individual Employer Rate

Fig 5.5 **Employer Accounts, Industry Groups and Rate Groups (1996-2002)**

	1996	1997	1998	1999	2000	2001	2002
Employer Accounts	15,685	15,594	15,703	15,923	16,176	17,572	17,389
Industry Groups	110	110	108	107	98	96	98
Rate Groups	38	38	40	40	38	35	35

Some rate groups consist of a small number of employers. Examples of single employer rate groups are power generation and rail car manufacturing. Some rate groups may be so dominated by one employer that it effectively sets the rate. An example is rubber manufacturing (rate group 13 in 2002) with twelve active employers. Most are personnel companies with workers at Michelin plants. The others are small rubber stamp companies and tire retreading and recycling companies.[25] Another is Nova Scotia Power in a group with small power plant operators.[26] These dominant employers in a rate group are effectively 100 per cent experience rated. While they benefit from policies limiting base rate increases from one year to the next, they have to pay today for future costs of current claims.[27]

The provincial cost experience ratio is the ratio of five-year, new-injury costs to five-year, assessable payroll. Since 1996, it has decreased by 40.7 per cent.

Fig 5.6 **Provincial Cost Experience Ratio (1996-2002)**

1996	1997	1998	1999	2000	2001	2002
.007951	.007449	.006622	.005708	0.004716	.004630	.004716

A rate group cost index is the rate group cost-experience ratio divided by the overall provincial ratio. The rate group cost index multiplied by the average assessment rate, adjusted to allow for transition and experience rating imbalances, produces a baseline rate for the rate group.

Fig 5.7 **Rate Group Profile for 2002**

Rate Group	No. of Industry Groups	No. of Employers	Baseline Rate	5 Year New Injury Costs	5 Year Payroll	Cost Index
1	5	258	$0.55	$1,242,133	$1,557,254,605	0.211563
2	7	2,410	$0.72	$4,573,259	$3,450,962,684	0.280958
3	3	736	$1.20	$3,479,796	$1,573,452,492	0.469042
4	3	485	$1.41	$3,088,666	$1,195,664,466	0.547710
5	1	1,189	$1.47	$2,924,456	$1,087,287,213	0.570399
6	1	13	$1.62	$7,611,861	$2,558,006,269	0.631043
7	1	457	$1.85	$2,824,429	$834,512,152	0.717769
8	1	410	$1.89	$2,743,713	$794,055,320	0.732612
9	5	766	$1.89	$3,707,161	$1,071,200,794	0.733885
10	1	11	$1.95	$1,924,719	$538,049,779	0.757547
11	1	183	$2.14	$5,263,702	$1,341,134,054	0.832273
12	7	895	$2.16	$4,079,803	$1,028,363,356	0.841179
13	1	12	$2.33	$3,060,424	$715,410,417	0.907125
14	8	560	$2.61	$4,378,064	$913,010,674	1.016751
15	6	601	$2.94	$3,870,034	$719,152,747	1.141009
16	1	187	$2.98	$2,753,974	$503,802,922	1.159033
17	4	304	$3.27	$3,073,352	$513,729,859	1.268448
18	4	392	$3.33	$2,819,498	$462,197,311	1.293469
19	1	142	$3.63	$2,427,145	$364,544,565	1.411790
20	5	735	$3.91	$4,474,034	$622,924,292	1.522901
21	1	721	$4.25	$3,156,310	$405,142,072	1.652036
22	2	464	$4.46	$2,448,610	$299,633,384	1.732824
23	4	227	$4.79	$3,698,353	$421,238,377	1.861747
24	3	89	$4.80	$1,841,280	$209,150,642	1.866434
25	5	518	$4.97	$3,062,412	$336,259,420	1.931086
26	1	117	$5.05	$7,471,723	$805,713,978	1.966285
27	1	80	$5.09	$2,191,585	$234,414,200	1.982400
28	1	795	$5.30	$5,859,088	$602,335,066	2.062553

Fig 5.7 Rate Group Profile for 2002 continued

Rate Group	No. of Industry Groups	No. of Employers	Baseline Rate	5 Year New Injury Costs	5 Year Payroll	Cost Index
29	2	672	$5.69	$2,843,118	$272,302,680	2.213953
30	3	8	$5.95	$4,011,498	$367,648,158	2.313613
31	1	651	$6.29	$5,694,539	$494,078,942	2.444020
32	1	118	$6.42	$2,906,303	$246,593,088	2.499152
33	1	1,156	$6.72	$6,205,093	$503,656,104	2.612383
34	2	314	$8.05	$3,529,971	$238,914,728	3.132952
35	4	713	$9.69	$4,652,878	$261,754,599	3.769296
Totals	**98**	**17,389**		**$129,892,982**	**$27,543,551,409**	

The board uses an assessment rate setting model appropriate for the size and mix of industries in Nova Scotia. Using the Standard Industrial Classification (SIC) code for initial industry classification is appropriate, but will likely have to be re-examined as it becomes more outdated and the North American Industry Classification System (NAICS) becomes more widely used.

The system is objective and not subject to favouritism. It generates the desired revenue to meet funding targets and does not generate an excessive number of appeals. The system enables and accommodates experience rating and a balance between collective and individual employer liability.

Review Topic 3

Is the system that is used by the WCB to classify firms for purposes of setting an assessment rate (i.e., using industry groups) appropriate?

Response

Yes

Review Topic 4
If the answer to the previous question is "yes", is the manner of assigning a firm to a particular class appropriate?

Response
Yes

5.03 Self-Insured Employer Claims Costs and Administration Fees

Since the inception of the workers' compensation program, a small number of employers have self-insured and not shared responsibility for the cost of injuries with other employers. Their responsibility has been to pay the current cost of benefits for their employees each year and an administration fee to the Workers' Compensation Board. The board does not set aside funds to pay the future compensation to injured workers of self-insured employers. These employers do not share in the unfunded liability. Each has its own, separate future liability.[28]

The board may establish a schedule of self-insured employers by regulation.[29] No regulation has been enacted.

There are four self-insured employers in Nova Scotia – Government of Nova Scotia, Canadian National Railway, Cape Breton Development Corporation and Government of Canada, whose employees are covered by the *Government Employee Compensation Act*.[30] The board administers the federal statute in Nova Scotia under contract and fees for service.[31]

In 2000, self-insured employers accounted for 23 per cent of the workers in the province and 34 per cent of the workers covered by the workers' compensation program.[32]

The board receives income from self-insured employers to pay current compensation costs and its administration of those claims. In the past decade, this income has been a significant, but declining, percentage of the board's total revenue from employers.

On an ongoing basis, the board must review and adjust its administration fees so self-insured employers are neither subsidizing, nor being subsidized, by other employers. Both the board and the Government of Nova Scotia have an interest in ensuring self-insured employers are solvent and have secured the future payments to their current and former injured employees.

Although mining operations have closed, the Cape Breton Development Corporation (Devco) continues to exist as a company. The board still looks to the federal government as the self-insured employer to pay the future costs to Devco injured workers.[33]

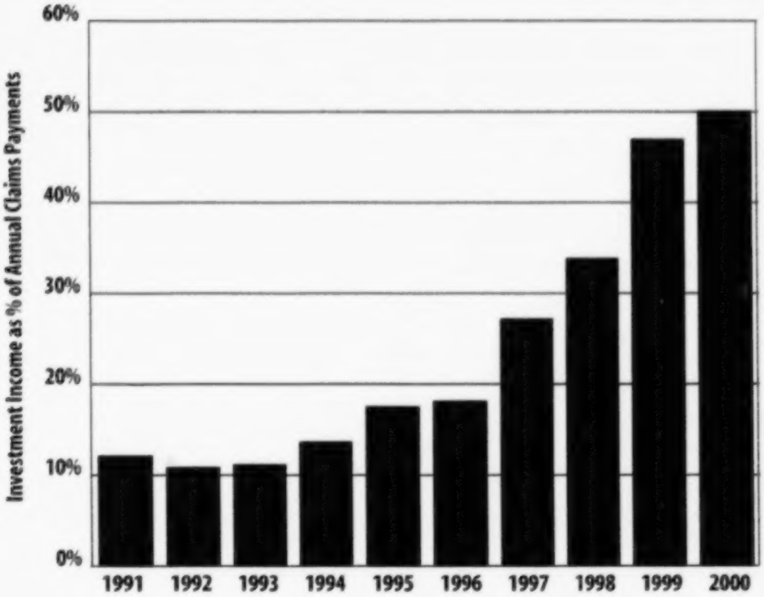
During the same period that assessment rates were kept too low to pay the costs for injuries among workers employed by rated employers, the board was charging self-insured employers low administration fees. These fees, as a percentage of claims costs for each self-insured employer, have increased in the 1990s.[34]

5.04 Investment Income – A Success Story

The board sets aside capital in the Accident Fund to pay ongoing benefits for past injuries. This capital is invested to earn income to help pay future benefits.[35]

From 1984 to 1992 investment revenue fell from 20 per cent to 10 per cent as a percentage of annual administration costs even though benefit payments declined.[36] In part, this was because funding shortfalls required the board to spend capital that was no longer available to generate investment income.

Fig 5.8 **Investment Income as % of Annual Claims Payments (1991-2000)**



For accounting purposes, dividend and interest income are recognized when earned. The value of equity investments is carried on the balance sheet using a moving average market method. Realized capital gains and losses on disposal of an equity or fixed-income holding are deferred and amortized over five years on a straight line basis. For valuation, unrealized gains and losses are deferred and amortized over five years on a straight line basis.

From 1996 to 2000, the Accident Fund grew from $285 million to $621 million. Annual assessment income increased from $149 million to $192 million. Net investment income, after money manager fees, increased from $18 million to $62 million a year. The $62 million was 24.37 per cent of total revenue for 2000. Investment income will likely decrease in 2001 and 2002.[37]

Fig 5.9 **Investment Income (1991-2000)**

	Accident Fund	Net Investment Income	Assessments	Government Contributions	Total Revenue	Investment Income as % of Total	Investment Income as % of Assessments
1991	$154,300,119	$14,223,168	$108,237,141	$0	$122,460,309	11.61%	13.14%
1992	$153,550,740	$12,817,664	$116,559,829	$0	$129,377,493	9.91%	11.00%
1993	$163,207,996	$13,376,473	$129,560,759	$0	$142,937,232	9.36%	10.32%
1994	$187,733,281	$15,511,097	$143,094,041	$0	$158,605,138	9.78%	10.84%
1995	$234,487,074	$18,397,413	$149,450,699	$4,597,000	$172,445,112	10.67%	12.31%
1996	$285,115,305	$19,535,542	$153,097,972	$4,603,000	$177,236,514	11.02%	12.76%
1997	$354,461,572	$24,727,968	$156,494,627	$4,600,000	$185,822,595	13.31%	15.80%
1998	$447,358,641	$32,652,346	$168,532,163	$4,600,000	$205,784,509	15.87%	19.37%
1999	$533,318,939	$52,760,235	$180,379,331	$4,600,000	$237,739,566	22.19%	29.25%
2000	$621,035,031	$62,103,123	$192,750,378	$0	$254,853,501	24.37%	32.22%

The board manages the Accident Fund in accordance with a written Statement of Investment Policies and Objectives.[18] A standing advisory committee of the board of directors oversees the investment policy. The board retains an investment consultant (Towers Perrin) and a custodian (Royal Trust, Global Securities Services). While investment managers retained by the board issue buy and sell instructions, the custodian holds the securities.

As of December 31, 2000, the fund had achieved a 9.7 per cent rate of return before management fees and a five-year annual rate of return of 13.7 per cent. The real rates of return, after inflation, were 6.5 per cent and 11.8 per cent. In 2000, after management fees of 0.21 per cent (21 basis points) of the market value of the manager's total portfolio, the value added to the fund was 4.09 per cent.

The performance objective is to exceed the rate of return of a passively managed benchmark portfolio by 1.25 per cent per annum on average over five years, after fees.[19]

The Royal Trust pension fund evaluation comparison of December 31, 2000 gives a percentile ranking of the Nova Scotia board compared to other funds for the past seven years.

Fig 5.10 **Percentile Ranking Compared to Other Pension Funds (1 to 7 Years)**

Years	Percentile Ranking	Annual Rate of Return
1	51	9.7%
2	8	14.7%
3	20	12.1%
4	20	12.8%
5	9	13.7%
6	27	14.3%
7	38	11.6%

In 2000, the board's rate of return, before money managers' fees, was the fifth highest among workers' compensation boards in Canada. It was the highest on a two, three and four year annualized basis.

Fig 5.11 **Comparison of Annualized Returns on Investment (1997-2000)**

		Investment Return	2000	1 Year	2 Years	3 Years	4 Years
Total Funds (A) Total Portfolio Benchmark (B)							
Alberta	**A**	$4,378,455	4.97	4.97	9.74	10.15	10.85
	B		2.25	2.25	8.06	9.58	10.49
British Columbia	**A**	$8,391,018	5.00	5.00	7.40	8.60	9.90
	B						
Manitoba	**A**	$779,950	8.13	8.13	8.51	8.33	9.23
	B		4.33	4.33	8.59	9.38	10.15
NB/PEI	**A**	$699,217	4.58	4.58	8.70	8.50	9.60
	B		0.11	0.11	5.85	n/a	n/a
Newfoundland	**A**	$390,000	11.30	11.30	8.10	6.70	8.90
	B		5.30	5.30	9.20	8.70	9.80
NWT & Nunavut	**A**	$284,602	11.13	11.13	8.86	9.72	11.12
	B		7.22	14.00	9.90	-	13.20
Nova Scotia	**A**	**$666,760**	**9.70**	**9.70**	**14.70**	**12.10**	**12.80**
	B		5.40	5.40	10.40	10.30	11.10

Fig 5.11 Comparison of Annualized Returns on Investment (1997-2000) continued

Total Funds (A) **Total Portfolio Benchmark (B)**		**Investment Return**	**2000**	**1 Year**	**2 Years**	**3 Years**	**4 Years**
Ontario*	**A**	$12,662,532	7.96	7.96	10.37	10.72	12.60
	B		1.11	1.11	7.54	9.59	10.91
Quebec	**A**	$9,183,991	4.70	4.70	10.28	10.28	10.95
	B		4.07	4.07	8.73	8.62	9.46
Saskatchewan	**A**	$978,958	10.49	10.49	11.31	11.12	12.66
	B		5.19	5.19	8.59	9.66	10.67
Yukon	**A**	$148,848	10.34	10.34	6.01	6.95	7.76
	B						

Review Topic 27

Does the investment return earned by the WCB compare favourably to that of its Canadian counterparts and to pension funds?

Response

Yes

5.05 Bad Debts, Reporting Penalties and Other Charges

Some employers fail to pay all of the assessments they are responsible to pay to the board. Each year an amount is written off as bad debts.

The board has the authority to make charges and impose penalties for late payment or reporting by employers.[40] In recent years, this income has been approximately 1.5 per cent of the assessment income.

Fig 5.12 **Assessment Income, Bad Debts, Premium Adjustment Charges and Penalties (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Assessment Income	$78,825,996	$87,875,443	$129,560,759	$143,094,041	$149,450,699	$153,097,972	$156,494,627	$168,532,163	$180,379,331	$192,750,378
Bad Debts	–	–	–	–	$896,569	$1,038,793	$461,542	$816,043	$566,128	$797,686
Bad Debts as %	0.00%	0.00%	0.00%	0.00%	0.60%	0.68%	0.29%	0.48%	0.31%	0.41%
Premium Adjustment Charges	–	–	–	–	$1,553,308	$1,527,589	$2,189,897	$2,006,050	$2,031,420	$1,329,752
As %	0.00%	0.00%	0.00%	0.00%	1.04%	1.00%	1.40%	1.19%	1.13%	0.69%
Penalties	–	–	–	–	$143,200	$379,769	$754,287	$580,902	$750,320	$1,658,913
As %	0.00%	0.00%	0.00%	0.00%	0.10%	0.25%	0.48%	0.34%	0.42%	0.86%
Charges plus Penalties	$680,620	$1,043,907	$1,462,901	$1,630,520	$1,696,508	$1,907,358	$2,944,184	$2,586,952	$2,781,740	$2,988,665
Charges plus Penalties as %	0.86%	1.19%	1.13%	1.14%	1.14%	1.25%	1.88%	1.53%	1.54%	1.55%

5.06 Third Party Recoveries

Workers injured by persons not covered by the *Workers' Compensation Act* can sue to recover damages.[41] The board is reimbursed for damages recovered that it has paid and any additional amount is paid to the injured worker or survivors.

These amounts do not appear in the board's financial statements because recoveries that are reimbursements to the Accident Fund of past claims payments are deducted from the total claims payments in the year of recovery. Recoveries paid to self-insured employers are treated in a similar manner. Payments to outside counsel and professionals are not reported. An amount retained by the board to cover costs associated with pursuing the claim is offset from administration costs and not reported separately.

Fig 5.13 **Third Party Recoveries Netted Against Benefit Payments (1991-2000)**

	Short Term Disability	Long Term Disability	Survivor	Medical Aid	Total
1991	25,235	–	–	4,034	$29,269
1992	109,102	–	–	18,406	$127,508
1993	59,268	–	–	14,268	$73,896
1994	140,851	16,749	–	68,843	$226,443
1995	221,251	14,000	130,056	50,751	$416,058
1996	572,276	1,053	–	52,980	$626,309
1997	913,237	169,436	–	215,266	$1,297,939
1998	634,860	1,087	–	106,876	$742,823
1999	364,667	64,176	–	105,358	$534,199
2000	607,649	123,451	–	335,196	$1,066,296

5.07 Overpayment Recovery

Each year the board recovers a small amount it has overpaid to injured workers.[42] Interest is not charged.

From 1990 to 1996, overpayments were recorded when they were recovered. Information on overpayments is based on the date the overpayment is identified, not the date of payment. The date of recovery and the lag time between payment or identification and recovery is not tracked.

In 1997, the board implemented a new overpayment tracking system. The overpayments identified in that year include outstanding overpayments at the time the system was implemented. Although the 1990-1996 data suggests all identified overpayments were collected, they were not necessarily collected in the year they were identified.

Fig 5.14 **Overpayments Recovered (1991-2000)**

	Claims	Overpayments Identified	Overpayments Recovered	Difference
1990	1,321	$483,668	$483,668	
1991	912	$523,010	$523,010	
1992	769	$464,405	$464,405	
1993	776	$499,907	$499,907	
1994	798	$373,816	$373,816	
1995	730	$489,753	$489,753	
1996	497	$329,494	$329,494	
1997	755	$543,421	$238,823	$304,598
1998	491	$410,178	$374,562	$340,214
1999	593	$372,027	$382,127	$330,114
2000	530	$350,438	$324,140	$356,412

5.08 **Government Contributions and Guarantees**

Currently, there are no existing or projected contributions and no express guarantees from the Government of Nova Scotia.[43]

The government contributed $4.597 million to the to Accident Fund in 1995 and $4.6 million for each of the four years 1996 to 1999. This amount was intended to reduce the average assessment rate for classified employers by 10 cents in each of the five years.[44]

In 1994, the government indicated it would guarantee a real rate of return after inflation of 4.75 per cent on the board's investment capital.[45] In 1996, the board reported the guarantee was reduced to 4.04 per cent because of the improved funding situation.[46]

In 1997, it was determined the improved financial situation no longer required a government guarantee. The projected real rate of return (or discount rate) was reduced to 3.5 per cent, the rate independent actuaries determined to be appropriate in the absence of the guarantee.[47] This reduction in the discount rate resulted in an actuarial increase of $28.4 million in future benefit liabilities.[48]

6. Prevention and Rehabilitation

6.01 Prevention and Rehabilitation – Goals of Avoiding and Correcting

With the reduction in the level of compensation benefits in the 1990s and the reduction in the likelihood of workers receiving benefits because of exclusionary definitions and changes in administrative practices, there was a decline in worker confidence in workers' compensation and the agencies administering the program. Some organized labour groups lost their commitment to a public, workers' compensation program and fled to private insurers.[1] Many injured workers turned to, and called for greater access to, the courts.

Many of the persons who lost commitment and confidence view workers' compensation as solely financial compensation for workplace death, injury and illness. They might say the sole goal is "the largest amount of compensation possible with as little litigation as possible."[2] The goal must be much more.

Workers' compensation payments for death, injury and illness, like tort litigation, do transfer money to the persons recognized as injured workers, surviving spouses and dependent children. And the transfer has generated ongoing debate about whether industry, wage earners or consumers are the ones who pay the financial cost in the short term or the long term and who ultimately pays.[3]

In a broader context, the transfer of money through workers' compensation payments does not create wealth. While workers' compensation is a most valuable and necessary part of our society, benefit payments are defensive expenditures for past or present damage to people, similar to payments to repair property after an accident or disaster. Some injured workers say they are treated like damaged property, replaced at work, discarded and forgotten or "fixed" at the minimum cost and inconvenience.

Prevention of deaths, injuries and diseases is the first and most obvious course of action against their harsh consequences. It is better to prevent, than pay for, the consequences. Pressures on the cost of workers' compensation should stimulate heightened attention to prevention to avoid more cost. Increased prevention will lessen costs, enable larger benefits, and increase confidence and commitment.

Vocational and medical rehabilitation to help an injured worker return to work is the second course of action. Rehabilitation restores health, improves physical and social well-being and saves money.

Workers' compensation pays injured workers and health-care providers to lessen the consequences of occupational death, injury and illness. These benefit payments are most often the focus of workers' compensation review and public discussion. Expenditures or measures to prevent death, injury and illness or to reverse the consequences through rehabilitation and getting injured workers back to work are less often discussed.

The board's vision of a "healthy, working Nova Scotia"[4] embodies the strategies or values of prevention and rehabilitation. Neither was in the forefront of the review topics. However, many persons who presented to the committee recognized and underscored their importance.

Both prevention and rehabilitation must recognize and address the main changes in the nature of work – the demographics of present day workers, the changed nature of the workplace and work, and changed nature of working relationships.

6.02 Prevention of Workplace Death, Injury and Illness

Prevention strategies should direct the broader occupational health and safety and workers' compensation program. The value and importance of prevention and its connection to workers' compensation have not been effectively communicated and adopted by employers. A 1998 survey of employers found that:

> Just under half of the employers believe their main responsibilities are to report accidents accurately (43 per cent) and to much lesser extent, to ensure a safe workplace (17 per cent)... only one third of employers believed that experience rated assessments actually reduced accidents in the workplace; this was only slightly higher than the number who believed experience rating increased usage of company sickness plans as an alternative to filing a WCB claim.[5]

An October 2001 report found that:

> ...it is clear that many small businesses and community development organizations simply do not understand the requirements of the [*Occupational Health and Safety Act*] and regulations. Many reported perceived requirements that either did not apply to them or were in fact beyond the actual requirements of the act and regulations. The problem of misunderstanding is very serious as respondents perceive that the requirements are overly onerous and beyond reason. As a result, in despair, some small businesses are ignoring the act and regulations. Clearly, an education and awareness campaign is required.[6]

It is a shared responsibility of employers and workers to prevent workplace death, injuries, and illness. Others who serve a supporting role are the government, professionals, standard-setting agencies, training and educational institutions, advisory councils, engineers, laboratories and so on.

The prevention mechanisms include the internal responsibility system, government support, standard setting and enforcement, economic incentives and recognizing workplace change.

The prevalent Canadian approach to promoting occupational health and safety is to rely on the internal responsibility system by which all workplace participants are held accountable for health and safety at the workplace. Workers are given a participatory role through a right to know about hazards, a right to refuse to work in some situations, and a right to participate on health and safety committees in some workplaces.[7]

Traditionally, the government's first role has been to establish safe standards of production and maximum levels of exposure to noise and toxic substances. Then, through various strategies, including internal responsibility, the government seeks to have workplaces achieve and adhere to the standards and levels. The strategies include, but are not limited to, enforcement. For example, contract-compliance provisions in service procurement can be a major incentive for prevention preparedness.[8]

In Nova Scotia, workplaces with 20 or more employees must establish and maintain a written health and safety program.[9] In 2000, there were 4,200 employers in Nova Scotia with more than 20 employees. Businesses with more than 20 employees employ 57.7 per cent of all employees.

Fig 6.1 **Distribution of Businesses by Number of Employees (2000)**[10]

Number of employees	4 or less	5-9	10-19	20-49	50-99	100-499	500 or more	Total
Number of businesses	35,420	5,606	3,850	2,672	853	591	84	49,076

Fig 6.2 **Distribution of Employees by Business Employment (1997-2000)**[11]

	1997	1998	1999	2000	Number of Businesses in 2000	% of Businesses in 2000	% of Employees in 2000
Total employees	324.2	338.4	348.4	361.1	49,076	100%	100%
Less than 20	135.2	143.6	152.2	152.7	44,876	91.4%	42.3%
20-99 employees	105.3	109.9	111.0	115.9	3,525	7.2%	32.1%
100-500 employees	54.0	58.8	58.4	64.1	591	1.2%	17.8%
More than 500	29.8	26.1	26.8	28.4	84	0.2%	7.9%

Government can enact the policy framework to promote occupational health and safety, but for prevention to be an effective strategy, attitudes must change.[12] Economic incentives are only one tool to change attitudes.

Effective prevention strategies include education and changes in managerial and worker attitude; changes in the technology and method of production (involving ergonomics, human factors design engineering and organization of work); changes in the chemical and material inputs to production; and, maybe, changes in the final products and services. Ultimately, workplace health and safety may have to be linked to pollution prevention in the general environment.

Under the relatively new *Occupational Health and Safety Act*,[13] the Occupational Health and Safety Advisory Council is responsible to monitor and report on occupational health and safety throughout the province.[14] The indicators it is to use have not been identified. By default, claims data from the Workers' Compensation Board for the portion of Nova Scotia workers and workplaces covered by workers' compensation are often used. The advisory council and Department of Environment and Labour are seeking to develop an integrated prevention strategy.[15]

There is no integrated and co-ordinated prevention strategy that fosters the development of knowledge, awareness and concern about the level of occupational health and safety in Nova Scotia workplaces. For the most part, workers and employers are on their own. Government support is largely reactive, not pro-active. No one agency or body is responsible to oversee and co-ordinate existing measures or support a comprehensive occupational health and safety and workers' compensation program.

6.03 Role of Workers' Compensation Board

Workplace health and safety and workers' compensation are mirror facets of one public program and an integral part of a province's industrial policy.

Since the inception of the workers' compensation program, there has been debate about the role of the Workers' Compensation Board in the prevention of occupational death, injury and illness. Over the decades, the board's role has changed from a primary to an ancillary actor. At one time, the board approved the establishment of employer associations, approved their rules for the prevention of accidents and paid the expenses of an association out of assessments collected from that industry.[16]

In time, the fashion across Canada was to separate the public occupational health and safety role from workers' compensation boards and place it in a mainline department of government. This happened in Nova Scotia in 1985[17] following a recommendation of the Committee on Occupational Health and Safety.

> It is recommended that the Department of Labour and Manpower be the lead agency in the administration and enforcement of occupational health and safety. This will require the absorption by the Department of Labour of mine inspectors from the Department of Mines and Energy, Occupational Health staff of the Department of Health, and the Accident Prevention Section of the Workers' Compensation Board. This recommendation is consistent with a recommendation of the Select Committee on Workers' Compensation[18] and with the situation that exists in the vast majority of other provincial jurisdictions. This concept would enable greater co-operation and coordination of occupational health and safety services and provide one-window shopping for users of the service rather than the fragmented situation which presently exists. The committee would urge that steps be taken to accommodate the consolidation at the earliest possible time.[19]

In recent years, the approach of assigning primary responsibility for government oversight and intervention to a department of government has been reversed in some provinces. Today, four of the provincial workers' compensation boards are responsible for some, or all, aspects of the administration of occupational health and safety legislation.[20]

In the 1999 Policy Platform Document *Strong Leadership – a Clear Course*, the Nova Scotia Conservative Party said it intended to restructure the Occupational Health and Safety Division of the Department of Labour and the Workers' Compensation Board "under one board that is equally representative of business and labour."[21] It also suggested reinstating the Accident Prevention Training Section of the Department of Labour which would "assist employers to meet their health and safety obligations to their employees."[22] Both of these options are continuing to be studied and discussed.[23]

The committee heard representations that the current division of responsibilities should remain unchanged and that all workplace health and safety and workers' compensation responsibilities ought to be combined with responsibility assigned to the board.[24] The Nova Scotia Federation of Labour and Canadian Union of Public Employees both recommend that the responsibility for occupational health and safety remain in the Department of Environment and Labour. The Canadian Federation of Independent Business recommends that the two functions should eventually be combined.

Currently, the Occupational Health and Safety Division has primary government responsibility to establish workplace responsibilities, support the workplace parties and intervene in the workplace. Together with the Workers' Compensation Board it may compile and maintain statistics.[25]

In the 2000/01 fiscal year the estimated budget for the Occupational Health and Safety Division was $6 million. It had been $3 million in fiscal year 1996/97. It increased after the 1998 Ian Plummer report identified a need for increased resources dedicated to occupational health and safety.[26] The Accident Fund is obliged to reimburse the Government of Nova Scotia for part of the operating costs of the Occupational Health and Safety Division.[27]

The formula for the contribution by the Accident Fund to the cost of the Occupational Health and Safety Division is as follows:

> ...the amount paid out of the Accident Fund each year with respect to the costs of administering the *Occupational Health*

> *and Safety Act* shall be that proportion of the total costs of administering that act that the number of employees employed by employers assessed pursuant to this act bears to the total number of employees in the Province covered by the *Occupational Health and Safety Act*.[28]

Currently 82 per cent of employees covered by the *Occupational Health and Safety Act* are also covered by the *Workers' Compensation Act*.

Fig 6.3 **OHS Division Expenditures, WCB Contributions and Employees Affected (1995-2002)**

	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02*
Expenditures							
OH&S (000)	$2,300	$2,561	$3,055	$3,587	$4,298	$4,326	$7,264
WCB Paid	$900	$1,450	$1,450	$3,566	$3,515	$3,547	$5,944
WCB %	39.1%	56.6%	47.5%	99.4%	81.7%	82.0%	81.77%
Employees							
Serviced by OH&S**	300,200	300,800	307,100	322,500	330,500	340,600	340,600
Covered by WC Act	265,437	247,163	256,649	264,562	272,570	281,416	281,416
WC Act as % of OHS	88.4%	82.1%	83.6%	82.0%	82.5%	82.6%	82.6%

** Estimates*
*** Reflects the legislative formula for coverage.*

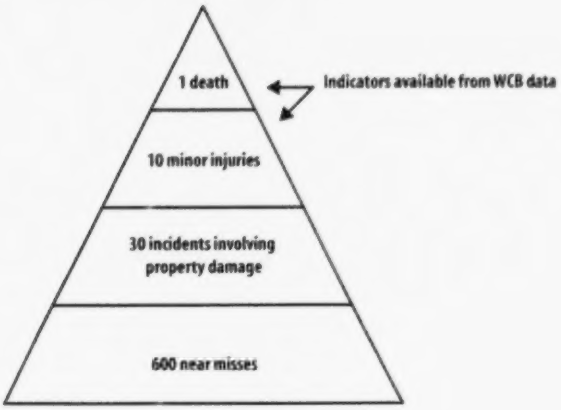
Apart from the Occupational Health and Safety Division, the board may fund research and safety programs on injury prevention, safety in the workplace and treatment of workplace injuries and scientific, medical or other issues relating to workers' compensation.[29]

The board and the Occupational Health and Safety Division of the Department of Environment and Labour "may co-operate in any way, including the sharing of information otherwise privileged or confidential, in order to promote occupational health and safety and achieve their goals."[30] The information may include any information regarding compliance with any enactment respecting occupational health and safety and board information or statistics regarding workplace injuries or occupational diseases.

To improve accident performance, employers and employees must be able to collect and interpret performance indicators. Workers' compensation claim statistics are only a partial indicator of prevention performance. Workers' compensation claims statistics report the more severe incidents in the hierarchy of accidents. They report deaths, injuries and illness (although these are not complete).

Workers' compensation claims statistics do not report incidents when there was only property damage or the more frequent near misses. Multiple near misses is a leading indicator of serious accidents to come. The greatest opportunity to influence incidents and outcomes is at this lower end of the severity pyramid. It is more limited higher up the pyramid. Diligence in preventing near misses and property damage accidents changes attitudes and leads to positive performance in the more severe indicators reported in workers' compensation claims statistics.

Fig 6.4 **Accident Severity Pyramid**[31]


1 death
Indicators available from WCB data
10 minor injuries
30 incidents involving property damage
600 near misses

The board has a role to collect levies for approved safety associations. The cabinet, on the recommendation of the Minister of Environment and Labour, can order the board to pay a percentage of the assessed revenue from an industry to a safety association.[12] Currently, the board makes payments to four safety associations: the Nova Scotia Construction Safety Association; the Nova Scotia Forest Safety Council; the Nova Scotia Trucking Association; and the Nova Scotia Retail Gas Dealers Association.

In 2000, the WCB reported these levies totalled $1.4 million, equivalent to 25 per cent of the WCB's financial contribution to the OHS Division.

Neither the WCB or OHS Division report on the activities of these associations. The division in its annual report noted that industry specific training has proven to be a successful way to reduce accidents rates in both the construction and forestry sectors. For this reason, the division encourages this activity by partnering with the safety associations. In 1999, the division considered a "value for money" assessment of the associations, but the review did not proceed.

Fig 6.5 **Safety Association Levies**

Association	Date of Order	% of assessment to be paid
Construction Safety Ass'n	Oct 29/93	3.5% of rate group SIC4011-4499.
	Oct 24/96	Added concrete ready mix (SIC 3551)
	Aug 15/01	3.12% of revenue for 2002; 2.99% for 2003; 2.86% for 2004; 2.73% for 2005 and 2.60% for 2006 and each subsequent year, unless a different determination is made
Forest Safety Council	Mar 26/97	3% of rate groups SIC 0169, 0168, 0411, 0511, 2512, 4565, 2561
Trucking Safety Ass'n	Nov 19/99	3% SIC 4561,4562,4563,4564,4569
Retail Gas Dealers Ass'n	Oct 3/96	2.5% of rate group SIC 6331

The committee heard that safety associations may be funded from year to year with a slightly different population of employers. This is because the definition of the industry in a cabinet order from which a levy is collected is fixed, while the grouping of employers for workers' compensation rate setting purposes may change from year to year. Association representatives expressed frustration with the lack of information particularly statistical information available for planning and evaluation purposes. The performance of the individual associations is the responsibility of their respective memberships. Periodic reports or updates may be provided to or requested by the Minister.

The inclusion or exclusion of industry sectors is voluntary. No overall review of the effectiveness of the safety associations as a prevention or compliance strategy dependent on funds collected under the authority of cabinet orders has been conducted.

6.04 **Experience Rated Assessments**

In this focused review, the only review topic directed to prevention concerns experience rated assessments.[11] This mechanism to promote workplace health and safety uses financial incentives. It allows the employer to choose the most cost-effective means to remove or manage workplace risks. This is a less direct control than setting standards, enacting regulations, inspecting workplaces and enforcing regulations.

For self-insured employers there is no variation in pricing at the total employer, group or individual employer level. The employer's cost for workers' compensation is entirely driven by benefit and administration costs.

Financial incentives in the workers' compensation program occur first through variations in pricing assessments at the macro level. Experience rating provides assessment variation at the individual employer level. The measurement for variation purposes is an employer's claims cost experience.

Experience rating shifts responsibility for compensation costs away from the collective responsibility of the employer rate group to the individual employer. Some believe it is a more equitable way to distribute claims costs among employers. The question for the committee is not whether it is, or is perceived to be, more equitable. The question is whether it is an effective prevention strategy.

The board introduced experience rating in 1996 as part of it new classification and rate setting model. The board compares an individual employer's claims cost experience to the overall experience of all employers in the same rate group. Those above the average are assigned a merit rating and those below are assigned a demerit rating. For a small number of employers there will no change from year to year.

Claims cost experience is the cost of new claims over the previous three years divided by the employer's assessable payroll over the same time period.[14] Some occupational disease claim costs, capitalized long-term disability costs and costs above the assessable maximum in the year of an accident are excluded from the calculations.[15]

Some costs not incurred by the board have been included as imputed cost. These are the cost of earnings replacement benefits that would have been paid to a worker had they not been paid directly by the employer.[16]

Total claims costs for one worker are capped over the three years at the maximum insurable earnings in the year of the accident, which was $41,100 in 2001.

All fatal claims are assigned the maximum for the year of the accident.[17]

Employers with claims cost experience better than the average of the rate group receive a merit. Those worse than the average receive a demerit. The merits and demerits are intended to balance. They do not. There is an imbalance each year. The value of the merits exceeds the value of the demerits by the amounts shown in Figure 6.6.

Fully participating employers can receive up to 30 per cent merit or 60 per cent demerit in 2002.[18] A 1 per cent merit or demerit is given for every 3.33 per cent difference the employer has from the cost experience of the rate group.

Employers active during the previous three years participate in experience rating to an extent determined by their assessments level. If the assessments were less than $5,000, the participation level is 33 per cent. It rises 1 per cent for every $2000 until full participation at $18,400 in assessments.

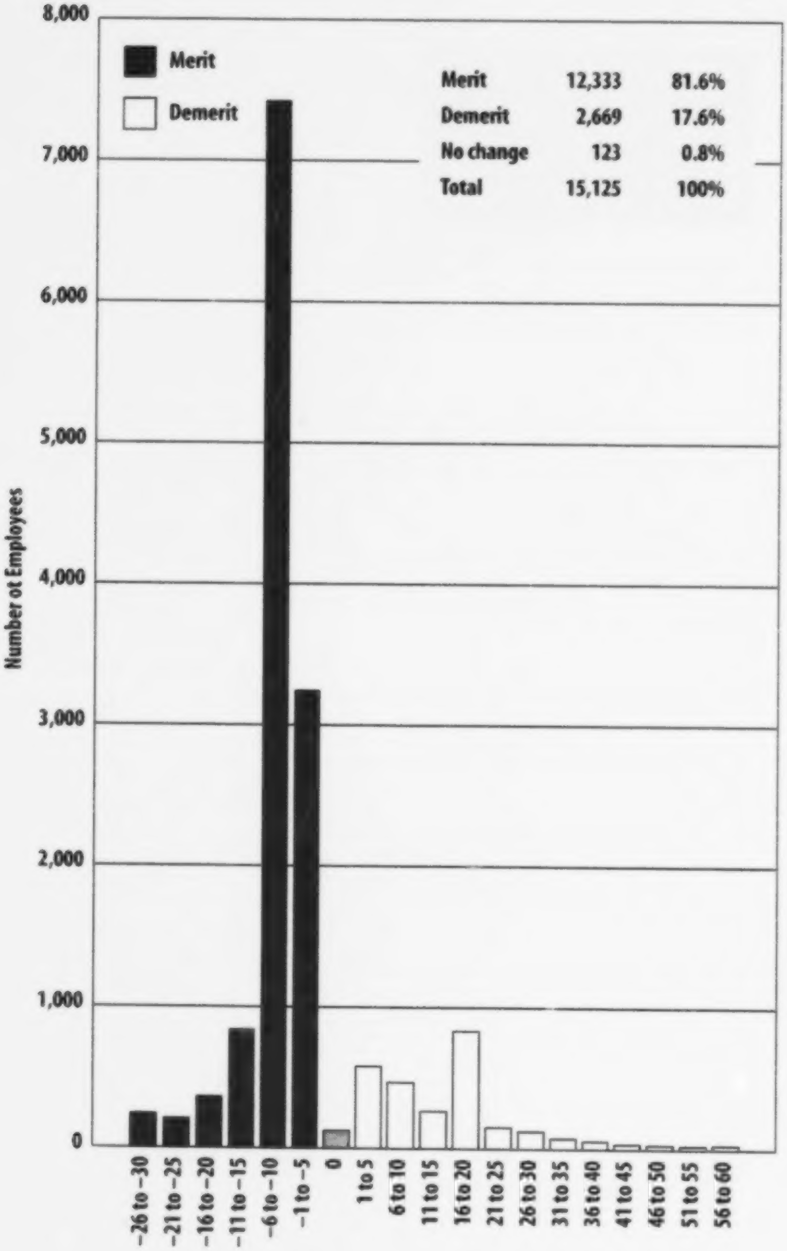
If an employer was active less than three years, the participation level is reduced to 25 per cent if only one year and 50 per cent if two years.[iv] The program makes prospective adjustments for past years' experience.

Fig 6.6 **Participation Rates and Other Features of Experience Rating (1996-2001)**

	1996	1997	1998	1999	2000	2001
Accounts Assessed	17,276	17,095	16,978	17,143	17,944	18,612
Participating* in Experience Rating	13,170	12,679	12,976	13,084	12,972	13,271
% Participating	75.79%	74.17%	76.43%	75.14%	72.29%	71.30%
Merits	10,164	9,869	10,333	10,562	10,355	10,719
Average Merit	$634	$664	$688	$745	$768	$858
Demerits	2,641	2,578	2,426	2,344	2,399	2,410
Average Demerit	$2,048	$2,204	$2,762	$2,786	$2,733	$3,076
Imbalance	$1,035,000	$875,000	$414,000	$1,342,000	$1,400,000	$1,800,000

** Employers with less than a full year of history and "Special Protection" accounts do not participate.*

Fig 6.7 **Distribution of Merits and Demerits by Percentage (2002)**



Merit	12,333	81.6%
Demerit	2,669	17.6%
No change	123	0.8%
Total	15,125	100%

Experience rating does not apply to self-insured employers, which account for more than 20 per cent of annual claims costs. The federal government is a self-insured employer by virtue of the *Government Employees Compensation Act*,[40] administered in Nova Scotia by the board. The other self-insured employers are the Province of Nova Scotia (including Nova Scotia crown corporations and agencies), Canadian National Railway (including Via Rail and Marine Atlantic) and Cape Breton Development Corporation.

Experience rating does not apply to special protection proprietors and partners.

Experience rating has not had an impact on the provincial injury rate since 1996. The provincial injury rate is calculated by dividing the number of new lost time claims for the accident year (including self-insured employers) by the workforce covered by the *Workers' Compensation Act*. This gives an injury frequency rate per 100 person-years. In 2000, 9,061 time-loss claims were divided by 283,100 workers covered to produce a provincial injury rate of 3.2, the same as it was in 1996.

Several factors can cause under-reporting of claims and affect the accuracy of the injury rate. For example, from 1996 to 1999 there was a reduction in claims for assessed employers in the range of 2,500 to 4,000. One estimate for the committee is that one-half of this reduction is a direct result of the introduction of the two-fifths waiting period.[41] Experience rating has not decreased the number of deaths each year.

Fig 6.8 **Injury Rate (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Injury Rate	4.7	4.4	5.1	5.0	4.0	3.2	3.2	3.0	3.1	3.2
Deaths	27	47	26	10	21	15	16	18	23	17

There has been a decrease in the average duration of time-loss claims since 1996, but the recent trend is to an increase in duration. It is not clear what caused the sudden decrease in 1997 and 1998 and then the increase in the duration of times-loss claims in 1999 and 2000.

Fig 6.9 **Average Duration of Time Loss Claims in Weeks (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
All Settled Claims	9.71	11.37	10.28	10.87	13.66	**15.72**	11.92	10.87	12.69	**14.60**
Claims < 4 Weeks	1.70	1.44	1.26	1.19	1.30	**1.51**	1.49	1.47	1.49	**1.46**
Claims > 4 Weeks	19.13	26.20	27.10	29.02	33.86	**34.64**	28.07	25.14	27.32	**31.25**

Experience rating will have less of an impact for any rate group where there is only one or very few employers or such an imbalance that one employer affects the experience of the rate group.[42]

Under the board's current experience rating program small employer participation is limited to 10 per cent merit and 20 per cent demerit.[43] Small employers pay less than $5,000 a year in assessments.

Fig 6.10 **Extent of Employer Participation in Experience Rated Assessments (1996-2001)**

Year	Accounts Assessed	Participating* in Experience Rating	% of Accounts Participating	Small Employer Accounts	Participating* in Experince Rating	% of Small Employers Participating
1996	17,276	13,170	75.79%	14,447	10,110	70.00%
1997	17,095	12,679	74.17%	14,210	9,482	66.72%
1998	16,978	12,976	76.43%	13,944	9,730	69.78%
1999	17,143	13,084	75.14%	13,920	9,787	70.31%
2000	17,944	12,972	72.29%	14,421	9,395	65.14%
2001	18,612	13,271	71.30%	14,970	9,505	63.49%

** Employers with less than a full year of history and "Special Protection" accounts do not participate.*

Experience rating should have the greatest appeal and impact with employers with high claims costs and the most potential to reduce assessments. It does not appear to have had an impact on the claim-leading employers. An analysis of the number of claims and payroll of the claims leaders discloses that some of them have improved[44] performance and some have deteriorated.

Variable pricing of workers' compensation assessments and full-cost responsibility for self-insured employers are cost-recovery pricing. All employers, regardless how negligent or egregious their actions may be, enjoy immunity from suit for workplace deaths, injuries and illness.[45]

Some persons say experience rating does not supply sufficient financial incentive to capture bottom-line attentive employers and positively impact on prevention. They argue the available data demonstrates experience rating has not had a positive impact on prevention and employers who take preventive measures still must pay for employers who do not. For them, experience rating needs to be "more forcefully administered."[46]

Others submit that direct cost or variable pricing through experience rating may be an incentive to create healthier and safer workplaces. But it can also be an incentive for employers to do other things – replace workers with technology; hire low risk workers; contract out work; contest claims (more appeals and increased litigation); reduce the duration and cost of claims by re-employing injured workers in less productive work ("walking wounded"); suppress or discourage claims reporting; and employ more stringent claims management.

In other studies, "An empirical linkage between experience rating and workplace safety has proved to be elusive."[47] In Nova Scotia it cannot be confidently concluded that experience rating has successfully resulted in a change in the injury rate or a change in severity or duration of time-loss claims or a change in the number of claims or time-loss claims. Some of these did not change for the better.

In addition, a significant number of changes were introduced at the same time as experience rating. There has been no controlled study focused on the population of large and small employers who have participated in experience rating.

Review Topic 5
Is experience-rating of employer assessments working well and positively impacting prevention?

Response
The committee agrees with the Workers' Compensation Board. There is no conclusive evidence that experience rating positively impacts employer prevention efforts.[48]

6.04 Vocational Rehabilitation

The board may make expenditures to aid injured workers in returning to work and to reduce the effect of injuries.[49] The worker has a duty to co-operate in the development and implementation of a rehabilitation program. If the worker does not, the board may suspend, reduce or terminate compensation benefits.[50]

Certain employers who employ 20 or more employees have a duty, for two years after the date of injury, to offer to re-employ, to accommodate and actually re-employ an injured worker for at least six months if the employer previously employed the worker for at least 12 continuous months.[51] The board has re-employment and vocational rehabilitation policies.[52]

Combined with experience rating, the duty to re-employ and accommodate creates an incentive for employers and shifts costs from the workers' compensation program to accident-prone employers. The Workers' Compensation Board has a responsibility to co-ordinate and supervise return-to-work plans. If it does not, then the employer's duty to re-employ and accommodate and the worker's duty to co-operate can operate as no more than mechanisms to enforce cost shifting away from the workers' compensation program.

Vocational rehabilitation expenditures by the board at the end of the decade were the same as at the beginning, despite the changes in the program introducing duties on workers and employers. The board does relieve employers from claims costs in specific situations.[53] It does not capture the number of claims or apportioned costs associated with workers participating in vocational rehabilitation programs.[54]

Fig 6.12 **Vocational Rehabilitation Expenditures by Category (1991-2000)**

Type of Payment	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Accomodations/meals/room and board	$91,513	$138,274	$143,576	$208,569	$182,760	$146,537	$166,119	$142,667	$168,150	$133,477
Equipment and Supplies	88,842	223,646	188,823	178,644	95,929	137,031	99,976	119,388	189,049	238,535
Travel and parking	302,172	523,502	602,115	430,376	112,630	79,138	79,073	69,939	102,648	109,363
Education/Training/Tutoring	1,103,310	1,779,420	2,044,708	1,328,424	1,731,317	962,370	810,325	778,733	906,749	793,544
Assessments/Testing	0	0	224,171	358,738	267,131	287,727	181,670	150,002	151,411	211,757
Renovations/Worksite Analysis and Modifications	74,255	36,260	182,241	225,885	63,502	28,373	53,790	175,522	256,971	239,151
Miscellaneous Rehab Expenses	420,274	557,317	77,706	21,680	15,780	6,257	11,228	1,784	862	7,214
Psychological Assessments/Counselling	0	0	8,939	13,768	11,114	20,064	51,327	71,196	93,624	176,279
Work Hardening	0	0	4,095	5,919	1,437	3,802	250	1,242	1,259	29,241
Relocation	0	0	2,339	5,558	19,348	11,116	17,657	15,135	18,881	6,070
All Other	0	0	66,043	29,539	48,445	41,175	71,634	38,981	68,070	113,858
Total	**$2,080,366**	**$3,258,419**	**$3,544,756**	**$2,807,100**	**$2,549,393**	**$1,723,590**	**$1,543,049**	**$1,564,589**	**$1,957,674**	**$2,058,489**

Return to work and vocational rehabilitation concerns were raised by many of the injured workers who appeared or made submissions to the committee. They spoke about problems they experienced when attempting to ease back to work prior to full medical recovery. They were told they would be assigned "light duties" but ended up doing a full load. In a nursing home situation, the committee was told how difficult it is to do reduced shifts and have someone replace the injured worker for the remainder of the shift.

Most injured workers mentioned the strain their return to work program put on co-workers. The committee was told of workers being given extra heavy loads of sheet metal to lift while on light duties and of the ridicule that often goes with a return to work program. Generally, there was no detailed plan to accommodate an ease back into full duties and no understanding shared by the injured workers, supervisors and co-workers on what was going to happen if the strain was too great or if there was a need to change the work assignment.

The Workers' Compensation Board does not have data on vocational rehabilitation outcomes. It is unable to identify the extent to which safe and sustained return to work was achieved or the extent to which pre-injury earnings were achieved. The board does not know the extent to which injured workers were restored to pre-injury physical and mental health and other indicators of success. It is unable to quantify the strategies that enabled successful outcomes.

The statute does not identify the goal of the workers' compensation program or the board's mission in rehabilitation. The board has defined its role as supportive of workers and employers.[66] This does not meet the responsibility injured workers expect the board to have in supervising, monitoring and enforcing return-to-work plans.

7. Benefits

Injured workers, surviving spouses and dependants of deceased workers are entitled to receive different benefits determined by the date of injury.

Fig 7.1 **Current Active Claims with Compensation Benefits (January – June 2001)[1]**

	Pre-Hayden (Prior to Mar 23, 1990)	Window Period (Mar 23, 1990 – Jan 31, 1996)	Current Act (After Feb 1, 1996)	Total
CRS pension	9,088	–	–	9,088
Supplementary Benefits	567	2[2]	–	569
Survivor Benefits	927	125	57	1,109
TERB	74	250	6,685	7,009
EERB/PIB	–	1,116	246	1,362
PIB only	–	388	519	907
Annuities[3]	–	136	12	148

7.01 Health Care and Special Allowances

Health care costs for injured workers are paid by the workers' compensation program.[4] A dramatic cost increase in the past two years is consistent with a national trend.

Fig 7.2 **Health Care Costs by Providers and By Claims Payments Made (1998-2001)**

	1998	1999	2000	2001 (Preliminary Data)
Medical and Doctor Costs	$ 4,199,460	$ 4,730,260	$ 5,727,464	$ 5,648,065
Hospital Costs	3,929,186	4,836,817	4,356,485	4,752,483
Treatment by other Healthcare Professionals	4,307,628	5,888,451	6,000,630	7,621,847
Transportation, Meals and Accommodations	974,538	1,197,248	1,377,953	1,738,740
Prescriptions	840,802	1,080,134	1,377,404	1,923,497
Equipment/Supplies	1,452,213	2,436,185	2,992,365	3,929,556
Clothing Allowance and Attendant Allowance	1,784,485	1,637,135	1,850,495	2,080,493
Mediated Settlement	676,536	45,438	3,500	-
All Others/Miscellaneous Categories	417,363	425,422	429,266	222,980
Third Party Recoveries	(106,876)	(105,356)	(335,196)	(439,408)
Total	**$ 18,475,335**	**$ 22,171,732**	**$ 23,780,365**	**$ 27,478,253**

The board does not automatically pay for all available forms of treatment. For example, massage therapy is paid if recommended by a physiotherapist, physician or other certified treatment provider in the course of a treatment plan, but not as a stand-alone treatment.

The board will not compensate for clothing, footwear or jewellery damaged or lost in an accident.[5] In prescribed circumstances, the board will provide a clothing allowance when a device, such as a brace, causes wear and tear on clothing.[6] The board pays approximately 1,000 clothing allowances each year at an annual cost of $385,000.[7]

The board pays for hearing aids, batteries and repairs, contact lenses and other aids.

The board pays expenses for workers' and escorts to travel to receive health care – transportation, accommodation and meals.[8] The preliminary cost for 2001 is $1,738,740. There has been a steady increase in recent years – 2000 ($1,377,953), 1999 ($1,197,248) and 1998 ($974,538).[9]

Claims expenditures are detailed on claims expenditure statements issued to both injured workers and employers on request.[10] Several injured workers were puzzled and concerned that these statements regularly have a category described as "unknown payments." They think the board should know all payments it makes. The board explained that the "unknown payments" should only be for payments prior to 1990 when the board converted to a computerized claim processing system. It continues to appear on current statements for claims with payments pre-dating 1990.[11]

Until February 1, 2002, injured workers were reimbursed for using a personal vehicle at the rate of 21 cents per kilometre. The rate was last increased in April 1997 from 18 cents per kilometre. The mileage rate for board employees is determined by administrative procedure and through collective bargaining.[12] The directors of the board are paid the employee rate, which is 32.2 cents per kilometre for the first 18,000 kilometres. Workers advisers and Workers Compensation Appeals Tribunal Commissioners and employees are paid 31.5 cents per kilometre.

Injured workers raised this disparity in rates for mileage. They believe their vehicles cost as much to operate as those of the directors and board employees. The committee has been informed the board changed the rate for injured workers in January 2002 to 32.2 cents per kilometre. This policy does not apply to travel an injured worker may have to make to meet with a workers' adviser or to attend a WCAT hearing.

7.02 Fatalities and Survivor Benefits

Death and survivor benefits are paid to surviving spouses and dependent children to compensate for loss of the deceased worker's employment income.[13] Families receive a lump sum award and compensation for transportation and burial.[14]

Fig 7.3 **Fatalities and Survivor Benefit Claims Costs Incurred (1991-2000)**[15]

	Fatalities	Survivor $	Growth %
1991	27	9,670,589	N/A
1992	47	11,004,000	13.7%
1993	26	11,962,819	8.7%
1994	10	7,045,856	-41.10%
1995	21	6,310,241	-10.44%
1996	15	5,133,957	-18.64%
1997	16	5,812,079	13.21%
1998	18	5,194,084	-10.63%
1999	23	5,831,247	12.27%
2000	17	6,022,115	3.27%

Survivor benefits increased in 1999 following retroactive reinstatement of some pensions and making some pensions payable for life, rather than to age 65.[16]

7.03 Annuities

Clinical Rating Schedule (CRS) Pensions paid prior to March 23, 1990 were, and continue to be, payable for life with no reduction at retirement age.

An Extended Earnings Replacement Benefit (EERB) under the new statute is not payable after age 65. Injured workers entitled to an EERB receive, in addition to the EERB, an amount equal to 5 per cent of the EERB and 5 per cent of any Permanent Impairment Benefit (PIB). The 5 per cent amount is set aside by the board to provide an annuity for the worker at age 65.[17] Annuity payments begin when the EERB ceases at age 65. The annuity payment is to replace retirement income lost as a result of a workplace injury or disease.

Some injured workers elect to have their annuity reserve paid into their registered retirement savings plans.[18]

The board includes annuity reserves in its long-term disability benefits liabilities in its financial statements. The total amount (to date) was included in the board's 2000 financial statements. It had not previously "booked" this portion of the benefits liability. It does not report the annuity amount separately or the rate of return the board credits to annuities, which was 4.81 per cent in 2000.[19]

Fig 7.4 **Annuity Reserves and Rate of Return WCB Credits to Annuity Reserves (1996-2000)**

	1996	**1997**	**1998**	**1999**	**2000**
Total Amt Paid	$1,108.98	$72,092.87	$40,537.97	$40,511.31	$114,200.82
Claims with Payments	1	44	19	18	43
Reserves	$84,988	$143,418	$322,232	$731,696	$1,312,704
Rate of Return	7.06%	6.04%	4.71%	4.38%	4.81%

This figure states the amount of the reserve applicable to each year.

The board does not provide an annual annuity statement to each worker.[20] At age 65, an annuity reserve less than $10,000 it is paid in a lump sum, unless the worker elects to receive periodic payments.[21] To date, the WCB has had only one annuity in excess of $10,000, which was paid out as a lump sum to the worker.[22]

7.04 Clinical Rating Schedule (CRS) Pensions

As of October 31, 2001, 9,120 injured workers were receiving these payments for life.[23] With time, the number will decline, but some members of this category of injured workers will still be receiving payments decades from now. The youngest is 30 years of age.[24]

Fig 7.5 **CRS Benefit – Workers and CRS Amount (1991-2001)**

	Workers	**Pension $**
1991	11,984	37,445,621
1992	12,102	38,105,156
1993	11,207	34,570,000
1994	10,811	30,910,758
1995	10,213	30,521,184
1996	10,856	37,017,696
1997	10,228	32,100,913
1998	9,875	32,060,767
1999	9,619	30,986,619
2000	9,205	30,512,181
2001	8,867	29,067,636

The total payment amount increased in 1996 when 255 workers were moved from AIEL back to CRS benefits. The 1997 decrease reflects the new wage loss system coming into effect. Some workers were paid temporary and extended earnings replacement benefits.

A significant number of the workers receiving a CRS pension have suffered hearing loss.

Fig 7.6 **Number of Hearing Loss Claims (1991-2001)**

Year	Volume	CRS Pension Recipients for Hearing Loss Claims
<1991	1,311	–
1991	598	248
1992	515	200
1993	761	198
1994	904	192
1995	847	186
1996	878	200
1997	968	201
1998	939	202
1999	1059	201
2000	1333	187
2001	1554	–

As of November 20, 2001, the board has paid 2,832 claims since hearing loss was accepted as a compensable injury under the program.[23] The majority of claims accepted for traumatic or noise induced hearing loss result in a Permanent Medical Impairment (PMI) and a lump sum Permanent Impairment Benefit (PIB). Temporary Earnings Replacement Benefits (TERB) and/or Extended Earnings Replacement Benefits (EERB) are usually only paid when the claim is for traumatic hearing loss.

Fig 7.7 **Hearing Loss Claims and Costs (1991-2001)**

Payment Year	No. of Claims	Compensation	TERB	Medical Aid	PIB	EERB	CRS Pension	Total (millions)
<1991	1,311	1,698,684	–	707,850	–	–	1,510,575	3,917,109
1991	598	2,992	–	179,467	–	–	428,071	610,529
1992	515	205	–	113,672	–	–	353,219	467,096
1993	761	11,605	–	284,050	–	–	363,356	659,011
1994	904	29,229	–	363,268	–	–	341,447	733,945
1995	847	13,181	–	426,798	–	–	335,326	775,306
1996	878	1,347	6,068	387,151	203,308	–	454,371	1,052,244
1997	968	30	22,791	524,530	116,055	33,467	421,051	1,117,923
1998	939	210	31,624	513,115	81,162	–	494,430	1,120,542
1999	1,059	966	22,883	1,186,219	190,017	14,686	520,073	1,934,844
2000	1,333	5,357	1,052	1,481,373	666,948	17,105	384,058	2,555,893
2001	1,554	–	3,944	1,561,844	875,327	121,587	348,849	2,911,551
Totals		$ 1,763,806	$ 88,362	$ 7,729,338	$ 2,132,816	$ 186,845	$ 5,954,827	$ 17,855,994

Hearing loss claims have become another date driven category of claims. In 1999, the board proposed to apply the *American Medical Associations Guidelines to the Evaluation of Permanent Impairment – Fourth Edition* (the AMA Guides) to assess Permanent Medical Impairment (PMI) for hearing loss commencing January 2000.[26] The board estimated there were 500 claims to be assessed.

In 2000, the board assessed 281 claims of which 223 workers received a lump sum Permanent Impairment Benefit (PIB) and 58 received a monthly benefit. Several decisions were appealed. The Workers Compensation Appeals Tribunal decided in one appeal that the AMA Guides could not be applied to claims when both the audiogram and the date of the worker's retirement were prior to January 1, 2000.[27] Another WCAT decision led the board to adjudicate cases where tinnitus arose prior to January 1, 2000 under the old PMI guidelines.[28] These appeals determined how the remaining 300 or so claims were adjudicated. No action was taken to review the claims where benefits were awarded that should not have been awarded.[29]

7.05 Adjustment and Indexing of Benefits

The board will increase an injured worker's pre-injury earnings to account for a wage rate increase after the date of injury if the increase is retroactive to the date of injury or earlier. It will not adjust for a wage rate increase that takes effect after the date of injury.[30]

Benefit payments were indexed in 1975 so they would keep up with increases in the cost of living. The index factor was 2 per cent for every full 2 per cent increase in the Consumer Price Index (CPI). If the CPI did not increase at least 2 per cent, as it did not in 1994, no indexing factor was applied.[31]

One of the actions taken to contain the cost of benefits while reducing the unfunded liability was to suspend indexing of benefits for the five years from 1995 to 1999.

Since January 1, 2000, the all-items Consumer Price Index (CPI) published by Statistics Canada is the benchmark for annual adjustments to benefits. The current index factor is one-half the annual CPI change of the previous year.[32] One-half the preceding year CPI rate is used because benefits are indexed at the beginning of the year. The indexing factor for 2001 was 1.75 per cent.

The 2000 increase was 0.9 per cent; one-half the CPI for 1999. This increased current benefit payments by $448,360, of which $312,132 was for assessed employers. It increased benefit liabilities by $2.8 million.

The last indexing increase before 2000 was 2 per cent in 1993. The five year suspension of indexing reduced claims payments in those years by $1.8 million. The suspension reduced benefit liabilities by $12.5 million.[34]

With full indexing of benefits over the seven years, injured workers would have received increases of 12.8 per cent. If the indexing formulae in effect in 1992 had been continued, the increase would have been 4.4 per cent rather than 0.9 per cent.

Fig 7.8 **Comparison of Suspended (Actual) and Continuous Indexing of $100 (1994-2000)**

	1994	1995	1996	1997	1998	1999	2000
CPI % Increase	1.10%	1.50%	1.70%	2.10%	0.60%	1.70%	3.50%
Actual Indexing	–	–	–	–	–	–	0.9%
$100 Indexed	$100.00	$100.00	$100.00	$100.00	$100.00	$100.00	$100.90
Indexing at ½ CPI	–	0.6%	0.8%	0.9%	1.1%	0.3%	0.9%
Accumulative % Increase at ½ CPI	–	0.6%	1.3%	2.2%	3.2%	3.5%	4.4%
$100 Indexed at ½ CPI	$100.00	$100.55	$101.30	$102.17	$103.24	$103.55	$104.43

If full indexing were implemented for 2002 or 2003, the estimated increase in benefit liabilities is $129.3 million or 16 per cent of the liabilities as of December 31, 2000.[54]

The committee considers it is short sighted to limit indexing of benefits. Indexing in an earnings loss system assists the injured worker to maintain a current income replacement that keeps abreast of cost of living increases. It provides an annual annuity contribution that stays abreast of inflation.

The most seriously injured workers most in need are hurt the most by not indexing their current income replacement benefits and their annuity reserves. With time, they will become impoverished if their main source of family income is workers' compensation benefits.

Recommendation

Over time increase the indexing of benefits from 50 per cent to 100 per cent of the Consumer Price Index.

7.06 Amended Interim Earnings Loss (AIEL)

After the Court of Appeal decision of March 23, 1990, the board introduced and then amended an interim earnings loss policy. When the new statute was enacted in 1995 it discontinued these payments, even though injured workers expected the interim policy was merely partial payment until a full earnings loss system was put in place. These workers feel strongly that a promise was broken. The AIEL benefits were reinstated in 1999.[35] Currently 255 injured workers receive these benefits.

Fig 7.9 **Amended Interim Earnings Loss Benefits (AIEL) (1992-2000)**[36]

	1992	1993	1994	1995	1996	1997	1998	1999	2000
workers	8	352	872	1218	1155	28	–	31	247
$	$4,290	$869,652	$3,729,087	$5,176,181	$1,758,864	$66,904	–	$1,382,096	$1,633,713

7.07 Supplementary Benefit

Some of the over 6,000 injured workers receiving a permanent partial Clinical Rating Schedule (CRS) pension for life that was awarded before March 23, 1990 (pre-Hayden) have been able to return to work and earn full wages in addition to their disability pension. The anecdotal accounts are that some workers received a pension because of influences outside impartial adjudication of the merits of their claim. Other workers received a CRS pension and were unable to return to earning full, or any, wages.

Low-income workers injured before March 23, 1990, who are receiving permanent partial or total disability benefits (CRS pension), cannot receive earnings loss replacement benefits. Despite any hopes they may have had after the Court of Appeal decision, they are not eligible for earnings loss benefits under the new 1995 statute.[37] The Court acknowledged that, "in some cases, there may be a total impairment of earning capacity with a relatively smaller degree of physical impairment as defined by the medical doctor."[38]

The 1995 legislative changes introduced a supplement for workers receiving CRS pensions who are unable to regain or establish an earning capacity.[39] The Supplementary Benefit is a monthly income subsidy. Unlike other initiatives, this is not a shifting of costs from workers' compensation to other support programs. It is an acceptance of responsibility. Many submissions argue it is not a sufficient acceptance of responsibility.

To receive the income subsidy, CRS pensioners must prove they have a continuing financial need because their annual income is below the threshold set for individuals under the Guaranteed Income Supplement program ($12,120 a year) under the federal *Old Age Security Act (Canada)*.[40] The current old age security level of $12,120 per year for a work year of 2,080 hours (52 x 40 = 2,080) is the equivalent of $5.83 per hour. The minimum wage is currently $5.80.[41]

The Supplementary Benefit is a bridging benefit. Qualifying workers are paid a monthly supplement until age 65 to bring their income to approximately what they can expect to receive at age 65. However, for some workers the supplement does not bring their income to the old age security level because there is a maximum monthly payment of $424 or $5,088 a year.

Fig 7.10 **Supplementary Benefits – Number and Amount (1995-2000)**

	1995	1996	1997	1998	1999	2000
Workers	406	653	688	689	667	639
Amount	$227,933	$1,336,980	$1,539,963	$1,665,125	$1,706,033	$1,676,790
Average	$561	$2,047	$2,235	$2,417	$2,554	$2,624

Fig 7.11 **Distribution of Recipients by Age and Average Benefit (2000)**

Age	**<25**	**25-34**	**35-44**	**45-54**	**55-64**	**Total**
Number of Workers	1	8	83	247	301	640
Average Age	24	33	41	50	60	53
Average Benefit	$ 4,995.66	$ 3,355.73	$ 2,987.55	$ 2,741.36	$ 2,391.58	$ 2,619.99

Figure 7.11 includes all claims receiving supplementary benefits in 2000. As a consequence, the average payments are less because some of the claims were paid only for a portion of the year.

The gender distribution of supplementary benefits recipients is approximately 67 per cent male and 33 per cent female.

An evaluation of the Supplementary Benefit program in 1997 concluded there was positive satisfaction with the benefit among recipients, for whom there were positive financial and social impacts.[42]

By definition, this is the group of injured workers most in financial need. The transition of the workers' compensation program from a Clinical Rating Schedule pension to earnings loss replacement did not include these workers. Several persons urged the committee to recommend an increase in the amount of the Supplementary Benefit and an expansion of the number of workers who can qualify for this benefit.

The board provided the committee a discussion paper on options for enhancing the Supplementary Benefit.[43] It identifies five approaches with six options to increase the amount of benefits and the persons eligible for the benefit.

1. Include only 50 per cent of CPP disability in total personal income.
2. Raise the income threshold from current Guaranteed Income Supplement ($12,120) to Low Income Cut-off for single person in
   (a) urban area ($14,965), or
   (b) rural area ($13,924).

3. Raise maximum amount payable from Old Age Security maximum ($424) to maximum monthly Guaranteed Income Supplement ($504).
4. Raise both the income threshold and the Old Age Security maximum.
5. Eliminate maximum amount payable – top all eligible recipients up to the Guaranteed Income Supplement level ($12,120).

Based on the data in the board's paper, the committee commissioned a cost analysis of the options. That analysis identified that options 1, 2(a) and 2(b) do not benefit injured workers with the lowest total income. Options 3 and 4 do not benefit injured workers with the highest total income. Option 4 benefits all workers receiving a supplementary benefit and benefits the most those with the highest income. Option 5 establishes a true minimum income benefit level and benefits the most those with the lowest incomes.[44]

Subsequent to receiving the cost analysis, the board substantially revised the number of workers receiving a supplementary benefit and their age distribution. This reduced the average benefit for each age group. The committee lost confidence in the costing analysis based on erroneous data supplied by the board. The committee did not have confidence that the latest data from the board was accurate.

For options 3, 5 and 1, the committee did not have data to compute the offset for the provincial government as a self-insured employer in a reduction in current social services costs. Or the consequences for individual injured workers of increased supplementary benefits on continued eligibility for needs based transportation, drug, housing or other subsidy programs. This has to be examined to determine if an increase in supplementary benefits will not have the perverse effect for individuals of making them ineligible for benefits under other programs and adversely affect their circumstances.

The superficial logic of option 1 is that it treats Canada Pension Plan disability payments the same for the supplementary benefit as for other workers' compensation benefits. Benefits are reduced by 50 per cent, not 100 per cent, of CPP payments. The current supplementary benefit eligibility criteria use 100 per cent CPP disability benefits because it is a need based supplement intended to take workers to the income level they are guaranteed at age 65 and not to a higher income level. At age 65, the CRS pensioner will receive the old age supplement plus the amount of the CRS pension. This is why this option does not benefit the workers who do not receive CPP disability benefits. It benefits the most those with the higher incomes and receiving the higher CPP benefits.

The low-income, totally disabled, pre-Hayden injured workers and spouses are the persons most in need of additional support from the workers' compensation program. The supplementary benefit is need based and should provide more financial support. At a minimum, there should be no maximum monthly payment (option 5). The program does not adjust payments for the number of family members dependent on the disabled worker.

The current benchmark for the maximum annual income is the threshold for individuals under the Guaranteed Income Supplement program ($12,120 a year) under the federal *Old Age Security Act (Canada)*. This amount is not appropriate for workers with an average age of 53. Using one-half the average industrial wage would be more appropriate. It is currently $29,116.88, one-half of which would provide an income of $14,558.

Recommendation

Amend the Supplementary Benefit Regulations to remove the monthly maximum payment and increase the income threshold for individuals to one-half the average industrial wage from year to year.

7.09 Payment and Commutation of Benefits

Compensation payments are made “in the manner and form as may appear to the board to be the most convenient.”[45] Payments from an employer to an injured worker may be deducted and paid as reimbursement to the employer.[46] In some specific, unusual situations the board may suspend, withhold, re-direct, deny or reduce payments.[47]

The specifics of the calculation of periodic payments for each injured worker are set out in the letter communicating the board’s decision to accept the claim. Injured workers receiving a CRS pension receive payment once a month. Some payments are deposited directly to a worker’s account. If there are changes in the amount, the worker is informed in writing.

The board often pays large retroactive sums to injured workers. Most commonly, it happens when a worker is successful on an appeal. In that circumstance, there has been no issue about whether the board should have a role in assisting the worker to decide what to do with the money.

The board may commute compensation payable as periodic payments and pay a lump sum to the worker when “in the opinion of the board it is to the advantage of the worker to do so.”[48]

The statute and board policies do not address commuting survivor benefits. The board is unable to tell the committee if it has ever commuted, or received a request to commute, a survivor benefit.

Calculating the amount of a lump sum payment today, in place of periodic payments into an uncertain future, is a complex matter. The board uses actuarial life expectancy tables to determine the number of monthly payments that will likely be made to the worker. The worker may actually live longer than expected or die sooner.

The life expectancy tables are social aggregates and do not accurately predict the life expectancy of individuals. They protect the Accident Fund because they work in the aggregate for the group, not for each individual.

The board also uses long-term investment return predictions. The actual rate of return on investment will be higher or lower than predicted. The estimated indexing following 50 per cent of the Consumer Price Index (CPI) may be higher or lower than the actual rate of inflation.

Currently, long-term investment returns are predicted using a 4 per cent per year CPI increase and a 3.5 per cent discount rate or real rate of return.[49] This is based on an assumption that a dollar wisely invested today is worth more than a dollar in later years because that dollar can be invested to generate money at a higher rate than the rate of inflation.

For example, the present value of a $50 per month payment for a male and a female aged 30 receiving a CRS pension for life and a PMI benefit to age 65 are as follows.

Fig 7.12 **Commutation Example: Age 30 and $50 per Month CRS Pension and PMI Award**[50]

Age 30	Male	Female	Commuted Value – $50 per Month (Male)	Commuted Value – $50 per Month (Female)
Life Expectancy	76	85	–	–
CRS – Present value of 1$	$201.1189	$207.4721	$10,056	$10,374
Years to age 65	35	35	–	–
PMI – present value of $1 (includes EERB)	$150.92082	$152.40823	$7,546	$7,620

Assumptions:
Indexing – 2% per annum (50% of CPI)
Mortality – 1971 Group Annuitant Mortality
Interest – 7.50% per year
Net Rate of Interest – 5.50% per annum

The board detailed its current approach and the approaches in other jurisdictions to commutation in a paper it prepared for the committee.[51]

The board automatically commutes Permanent Impairment Benefits (PIB) paid to workers injured after March 23, 1990, whose PMI rating is less than 30 per cent and who are not receiving an Extended Earnings

Replacement Benefits (EERB).[52] These are generally small pensions providing small monthly incomes, which generally reflect less severe injuries. Automatic commutation takes these workers off the books and out of the system for the administrative convenience of the board. Lump sum payments eliminate the cost of continuing administration.

Commutation does not relieve the board of future responsibility if the worker's circumstances worsen as a result of the injury. Commutation does not remove entitlement to medical aid and vocational rehabilitation services.

When the percentages are higher, the board will generally not commute. A request for commutation must meet the criteria outlined in board policies.[53] The criteria are different for CRS pensions and PIB/EERB payments.

Fig 7.13 **Current Commutation Criteria**

CRS Pension Commutation Criteria	PIB/EERB Commutation Criteria
• No automatic commutation	• Automatic if PMI 30 per cent or less and no EERB payable
• Workers are eligible for medical, rehab and other services even if CRS is commuted	
• If PMI 10 per cent or less • will provide the option if in the worker's advantage • will not commute if WCB becomes aware the worker is likely to use the lump sum otherwise than for the benefit of the worker or the worker's dependents.	• WCB may commute any amount if • it will be used for approved purpose • no other source of funds available • worker not dependent on pension for necessities of life • commutation in worker's best interests • injury is stable • 1st review of EERB is completed.
• If PMI more than 10 per cent, WCB will consider four options • commute whole pension • commute for fixed term • commute a portion of whole • commute portion for a term of years, to reduce pension for a fixed term, that later resumes to full pension	
• Guidelines for Not Commuting • commutation is not for an approved purpose • worker will need pension for necessities of life • not in the worker's best interests • other sources of funds are available.	

The board's policies seek to balance sometimes competing goals: to ensure a worker receives a steady and reliable lifetime source of income; to permit individual worker freedom of choice; to limit demands on the broader social safety net; to end positively the worker and board relationship; and to consider the financial implications of commutation.

Commutation on demand maximizes individual injured worker choice. Restricted eligibility rules substitute board and policy interests and judgement for the individual's choice. Restricted criteria implicitly assume the injured worker or surviving spouse do not know what is in their best interests or are incapable of managing large amounts of money.

Generally, the board only commutes on request when it decides the purpose will enhance the injured worker's future income. The board believes that:

> …only commutations which will increase the future income stream of the worker, namely those utilized for a vocational rehabilitative purpose (above and beyond the scope of the normal vocational rehabilitation services offered by the WCB), serve the long-term interests of the worker. Some pensioners believe that this assessment of their best interests as it relates to benefit entitlement is overly paternalistic.[54]

Some injured workers and surviving spouses believe their circumstances can be improved by using the money to pay down a mortgage[55] or other debt (perhaps with a high interest rate).[56] Or to purchase a new vehicle, pay for a child's education or some other purpose equally beneficial for them and their family. Some workers do have a need for vocational rehabilitation. Some simply want closure and an end to their ongoing relationship with the board, which may enhance their sense of self-reliance. Many CRS pensioners do not qualify for financing from banks or other institutions because of their age.

In the past decade, the board commuted 3,040 CRS Pensions with a total value of $16,281,217 and 7,350 PIB awards (since 1996) with a total value of $24,137,073. The total commuted payment for the decade was $40,418,290. The commutations were predominantly full, rather than partial, lump sum payments. The average commuted value of the CRS Pension was $5,355.66. The average commuted value of the PMI award was $3,283.96.

Commutation of a benefit reduces future benefit liabilities.

Fig 7.14 **Number and Value of Commuted Benefits (1991-2000)**

CRS Pensions

	Full Commute	Partial Commute	Total Payments ($millions)
1991	706	67	$5.3
1992	657	44	$4.3
1993	49	4	$0.6
1994	3	0	$0.4
1995	3	2	$0.4
1996	238	181	$2.0
1997	87	15	$0.9
1998	104	13	$1.1
1999	86	10	$1.0
2000	76	5	$1.0
Total	2,009	341	$16.2

PIB Benefits

	Full Commute	Partial Commute	Total Payments ($millions)
1996	2,971	157	$10.4
1997	1,141	92	$3.9
1998	745	52	$2.8
1999	945	43	$4.1
2000	1,176	28	$5.3
Total	6,978	372	$26.5

No Canadian workers' compensation program allows commutation on demand. Most boards consider, to some extent, the long-term financial interests of the injured worker in deciding whether to commute on request.

CRS Pensions and PIB/EERB payments are replacements for ongoing wage loss and earning capacity. They are paid periodically and for life or until age 65 to ensure the injured worker, surviving spouse and dependent children have continuing income. They are similar to locked-in, vested pension benefits.

For the workers' compensation program, commuted, lump sum payments, rather than periodic payments, increase current payments but reduce or do not increase future liabilities. The payments of the past decade have not had an appreciable impact on the financial situation of the program.

There is risk to the Accident Fund if injured workers who are aware of their imminent death can choose to have benefits commuted on demand knowing they will not live as long as the statistical assumptions about life expectancy used to calculate commuted values. The board says:

> If this occurred on a mass-scale, the statistical balance built into the actuarial evaluation would become disrupted, and the Accident Fund would absorb a great cost. An actuarial assessment estimates a possible cost of anti-selection at $53 million. This increases to about $80 million if one considers the liabilities for future permanent awards.[illegible]

The key is "mass-scale" selection to commute immediately prior to death. The committee considers this to be unlikely. Some individuals will realize that their interests are best served by demanding commutation in the year prior to their death, but it is unlikely to become a mass-scale phenomenon.

Others will realize that demanding commutation in a high interest (above 10 per cent) period will provide a commuted amount at a time when the interest they can earn on that amount will meet or exceed the amount of their monthly compensation. This will also be at a time that commutation has the greatest financial impact on the Accident Fund with assets invested for longer terms and deprived of the immediate return at a high interest rate. This is a real risk for the Accident Fund.

Discretion to grant or reject requests for commutation requires administrative resources and potentially places the board in conflict with those it is intended to help. To completely fulfil its mandate, the board should monitor to ensure the money is spent for the reason for which the commutation was approved. It does not.

Commutation of periodic payments eliminates an ongoing income stream. This may impact social programs that grant benefits based on need measured by income. When assessing need, workers' compensation periodic payments are a source of current income. A counter-balancing influence in favour of maintaining periodic CRS payments is that once the payments are commuted, the worker is no longer eligible for the Supplementary Benefit. Partial commutation could increase the amount of the Supplementary Benefit for an eligible worker. Commutation terminates annuity reserves for the injured worker. The annuity may be paid in a lump sum prior to age 65.[58]

Currently, there are 2,269 injured workers receiving PIB/EERB or PIB only payments.[59] The board does not have the distribution by PMI percentage of the 907 workers receiving only a PIB and no EERB. There are 1,362 workers receiving both a PIB and an EERB.

Fig 7.15 **New Permanent Medical Impairment Ratings (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
New awards	**1,414**	**1,314**	**12**	**6**	**2**	**3,614**	**1,264**	**903**	**1,307**	**1,374**
Total %	13,190	11,970	635	131	108	24,774	8,232	5,827	12,123	11,411
% Average	9.33%	9.11%	53%	21.75%	54%	6.86%	6.51%	6.45%	9.28%	8.3%
Number by %										
0.01-1.00	127	164	0	2	0	563	220	121	107	136
1.01-2.00	140	141	0	2	0	454	176	113	89	134
2.01-3.00	119	131	0	1	0	460	173	122	152	152
3.01-4.00	105	87	0	0	0	238	83	71	73	82
4.01-5.00	143	121	0	0	0	493	148	131	122	150
5.01-6.00	77	53	0	0	0	157	49	51	72	78
6.01-7.00	54	38	0	0	0	109	25	21	41	44
7.01-8.00	39	23	0	0	1	115	63	33	41	80
8.01-9.00	14	15	0	0	0	54	12	13	24	16
9.01-10.00	62	9	0	0	0	335	95	84	99	141
10.01-15.00	315	375	1	0	0	346	121	78	368	238
15.01-20.00	121	75	6	0	0	165	54	34	44	55
20.01-25.00	41	29	0	0	0	45	18	16	22	22
25.01-30.00	18	11	0	0	0	14	5	3	17	15
30.01-40.00	28	23	0	0	0	27	11	8	13	13
40.01-60.00	8	5	0	0	0	23	6	3	16	11
60.01-99.99	2	5	0	0	0	12	5	1	5	6
100 & over	1	9	5	1	1	4	0	0	2	1
Total	**1,414**	**1,314**	**12**	**6**	**2**	**3,614**	**1,264**	**903**	**1,307**	**1,374**

The 30 per cent PMI threshold captured 99.98 per cent of the new PMI ratings in 2000 and a similar percentage in each preceding year.

The distribution of CRS pensioners by percentage of disability reveals that the heavy weighting is in the lower percentages.

Fig 7.16 **Distribution of CRS Pension by Percentage of Disability**

	Workers	Spouses	Children	Totals	Cumulative No.	Cumulative %
0.1% to 9.9%	1,469			1,469	1,469	21%
10% to 19.9%	2,601	4		2,605	4,074	59%
20% to 29.9%	1,080	1		1,081	5,155	74%
30% to 39.9%	385			385	5,540	80%
40% to 49.9%	172			172	5,712	83%
50% to 59.9%	115			115	5,827	84%
60% to 69.9%	66			66	5,893	85%
70% to 79.7%	46			46	5,939	86%
80% to 89.9%	13		2	15	5,954	86%
90% to 99.9%	5			5	5,959	86%
100%	103	710	148	961	6,920	100%
Totals	6,055	715	150	6,920		

Fig 7.17 **Average Monthly Benefit by Category**

	Workers	Spouses	Children	PIB Workers
0.1% to 9.9%	$122.43			$5.03
10% to 19.9%	$217.53	$169.10		$11.63
20% to 29.9%	$346.95	$354.66		$22.75
30% to 39.9%	$459.56			$33.00
40% to 49.9%	$530.86			$48.63
50% to 59.9%	$635.50			$53.64
60% to 69.9%	$847.79			$71.34
70% to 79.7%	$794.47			$81.89
80% to 89.9%	$1,050.23		$1,576.69	$89.65
90% to 99.9%	$1,402.95			
100%	$1,094.45	$946.80	$1,715.76	$117.56

Fig 7.18 **Current Average CRS and Survivor Benefits by Assessed and Self-Insured Employers**

	CRS Pensions		Surviving Spouses	
	Classified	**Self-insured**	**Classified**	**Self-Insured**
Number	6,055	2,992	715	236
Average Age	60	66	65	74
Av. Monthly Benefit				
Total	279	289	942	852
CRS Only	259	286	933	846

The committee heard worker frustration with a widespread belief that the board is inconsistent in its approach to commutation requests. The committee was hampered it its ability to examine the extent of the problem because the board does not have data on the number of requests for commutation or the number of requests denied.[60] The board should annually report the number of requests and the number granted and denied.

Balancing the "pros" and "cons" for "commutation on demand", the committee has concluded the board's present approach should be modified. The central issue is consistency in approach to commutation requests. The statute allows the board to commute "where in the opinion of the board it is to the advantage of the worker to do so."[61] Workers should have more opportunity to satisfy the board they have determined that commutation is to their advantage.[62]

Review Topic 13

What are the pros and cons of "commutation on demand" of permanent benefits and should the present approach of the board be modified?

Response

The board's present approach should be modified. The board should create a presumption in favour of granting a request to commute when the worker and the worker's spouse jointly request commutation after having received independent financial advice and acknowledged they understand the consequences of receiving a lump sum rather than future periodic payments. The board should be able to adopt valuation assumptions for calculating a commuted amount that protects the Accident Fund from the interest rate risk, perhaps by using long-term economic assumptions rather than current market conditions.

7.10 Maximum Insurable/Assessable Earnings

The workers' compensation program does not provide full coverage for all wage loss for all workers. There is a maximum gross annual earnings covered for wage loss replacement. It is the same maximum for payroll assessments.[63]

In 1994, it was expected: "The maximum assessable and insurable earnings will be evaluated during the proposed review process and depending on the outcome of the review further increases may be considered."[64]

The Nova Scotia ceiling for insurable earnings and assessable payroll in 2000 was the second lowest in Canada. There are regional variations across Canada with the ceiling higher in the west than in the east.

There is no universally accepted benchmark for determining an appropriate maximum. One approach is to set a maximum amount that ensures the desired percentage of workers is provided with full coverage because they earn below the maximum. Another approach is to set the maximum and tie changes to increases in the cost of living or the average industrial wage or some other benchmark in the province or territory. Another is to set the amount and adjust it periodically.

Fig 7.19 **Maximum Insurable/Assessable Wage – Canada (2000)**

	Average Industrial Wage (AIW)	Maximum Insurable Earnings	Percentage of AIW	Earning Below Maximum
NWT & Nunavut	37,683	60,000	159%	n/a
Yukon	34,922	60,000	171%	89%
Ontario	33,590	59,300	176%	96%
British Columbia	32,260	58,000	180%	95%
Manitoba	28,230	52,720	187%	n/a
Quebec	29,656	50,500	170%	n/a
Alberta	32,082	48,000	152%	90%
Saskatchewan	28,093	48,000	171%	93%
Newfoundland	27,711	45,500	164%	93%
New Brunswick	27,335	45,100	165%	96%
Nova Scotia	**26,636**	**40,500**	**152%**	**85%**
PEI	25,063	36,600	146%	n/a

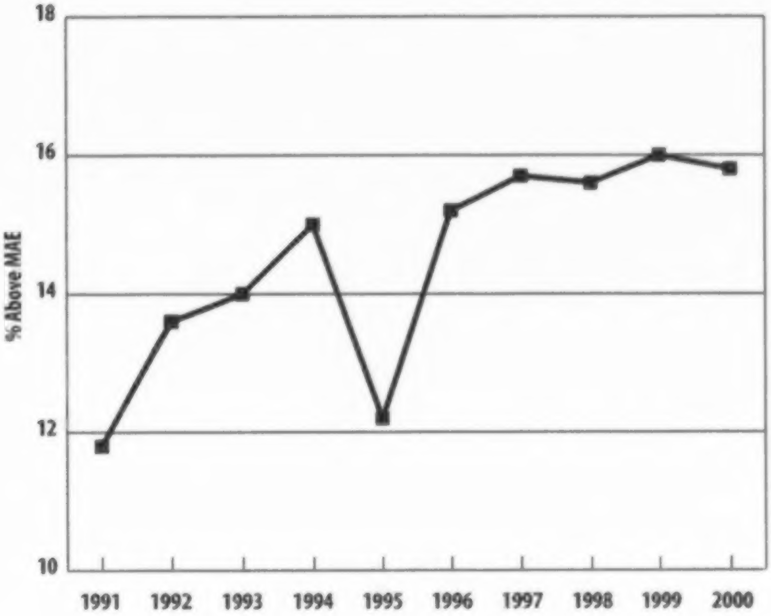
Since 1996, the Nova Scotia maximum was adjusted annually to remain at 152 per cent of the average industrial wage for Nova Scotia for the 12 month period ending March 31 in the preceding calendar year, rounded to the nearest $100.[65] The original percentage was 150 per cent.[66] It was increased in 1996 to 152 per cent to maintain the maximum wage level when there was a freeze on public sector wages which would artificially suppress growth in the provincial average industrial wage.[67]

Fig 7.20 **Maximum Insurable/Assessable Wage (1995-2002)**

1995	1996	1997	1998	1999	2000	2001	2002
$38,000	$38,600	$38,600	$39,300	$39,700	$40,500	$41,100	$41,100

From 1991 to 1994 the maximum remained constant at $34,000. For that period, the percentage of workers with earnings above the maximum steadily increased. When the maximum was increased to $38,000 in 1995 and pegged at 152 per cent of the average industrial wage in 1996, the percentage fell and then rose and remained constant.

Fig 7.21 **Percentage Accepted Time Loss Claims Above Maximum Wage Rate (1991-2000)**



During the same period, the average weekly wage differential between actual average weekly wages reported in accepted time loss claims and the maximum rate covered grew because the wages of the 15 per cent above the maximum grew at an increasing rate.

Fig 7.22 **Differential – Earned and Covered Wages for Accepted Time Loss Claims (1991-2000)**

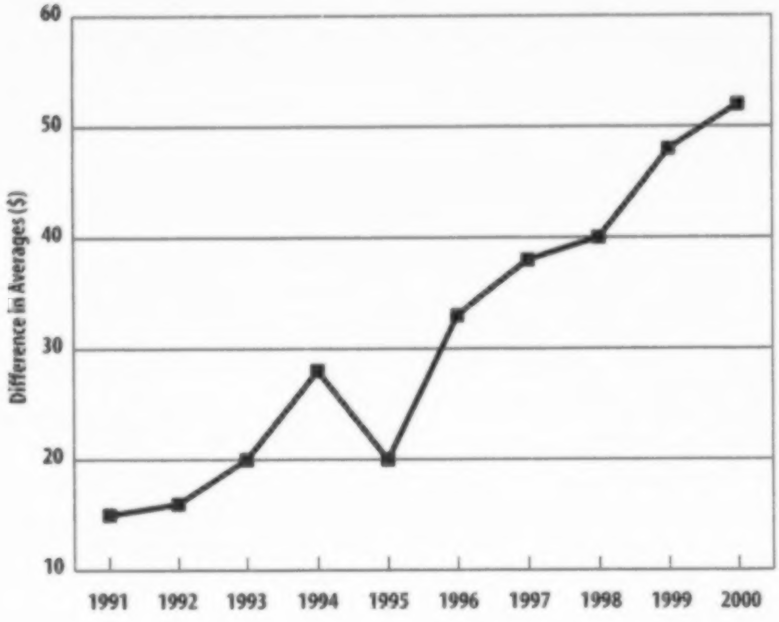
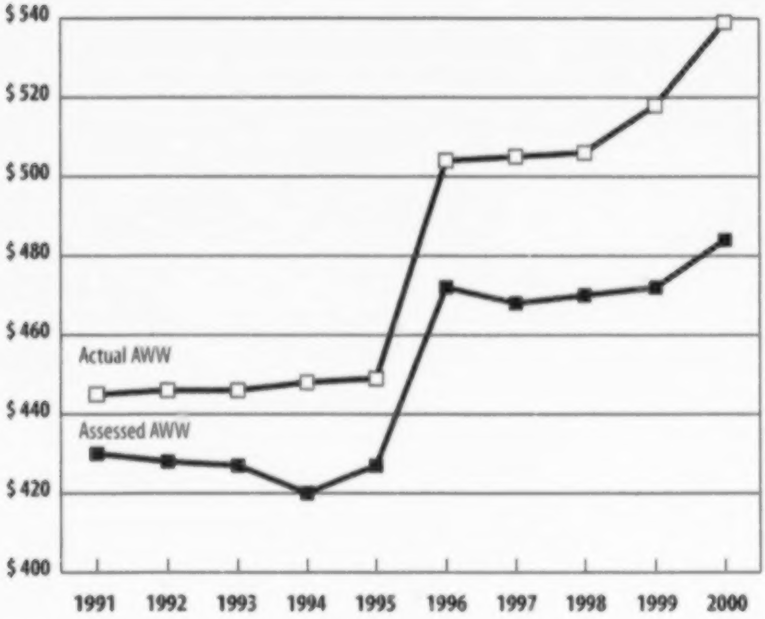


Fig 7.23 **Maximum Rate and Actual Average Wage of Accepted Time Loss Claims (1991-2000)**



The relationship between the maximum over the past decade and the earnings of injured workers who received benefits has remained constant since 1996.

Fig 7.24 **Maximum, 75 per cent Net and Average Actual Earnings (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Maximum Annual Assessable Wage	$36,000	$36,000	$36,000	$36,000	$38,000	$38,600	$38,600	$39,300	$39,700	$40,500
Maximum Weekly Compensable Wage	$692.31	$692.31	$692.31	$692.31	$730.77	$742.31	$742.31	$755.77	$763.46	$778.85
Average Assessable Annual Wage of Injured Workers	$22,308	$22,256	$22,152	$21,840	$22,204	$24,492	$24,284	$24,336	$24,492	$25,220
Average Assessable Weekly Wage of Injured Workers	$429	$428	$426	$420	$427	$471	$467	$468	$471	$485
75% Net of Maximum Weekly	$372.39	$369.46	$368.87	$393.25	$383.88	$388.44	$388.98	$395.09	$400.49	$412.65
75% Net Weekly as % of Maximum Weekly	53.79%	53.37%	53.28%	56.80%	52.53%	52.33%	52.40%	52.28%	52.46%	52.98%
Average Actual Annual Wage of Injured Workers (1)	$22,890	$23,133	$23,150	$23,140	$23,192	$26,201	$26,208	$26,364	$26,884	$27,917
Average Actual Weekly Wage of Injured Workers	$440.20	$444.88	$445.20	$445.00	$446.00	$503.88	$504.00	$507.00	$517.00	$536.87
75% Net as % of Actual Average Weekly Wage	84.60%	83.05%	82.85%	88.37%	86.07%	77.09%	77.18%	77.93%	77.46%	76.86%
CPI Adjustment Factor %	4.00%	4.00%	2.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.90%

Without any intervening event, the maximum insurable and assessable wage rate would rise to $41,700 for 2002.

Starting January 2001, the Statistics Canada survey of employment and payroll is based on the North American Industrial Classification System (NAICS). This is the standard used by our NAFTA partners, Mexico and the United States of America. Previously, Statistics Canada used the 1980 Standard Industrial Classification (SIC80). The change from SIC80 to NAICS has been ongoing in stages for years.

As a result of the change, average weekly and annual earnings increased in each province. For Nova Scotia, the increase was 6.27 per cent in the 2000 average weekly wage,[68] which is the benchmark for the maximum insurable/assessable wage rate for 2002.

Fig 7.25 **2002 Maximum Insurable/Assessable Wage Rate (SIC80 and NAICS)**

	Weekly	Annual	152%	New Maximum
SIC80	$526.92	$27,399.84	$41,647.76	$41,700
NAICS	$559.94	$29,116.88	$44,257.66	$44,300

The board estimates that at $44,300 the maximum rate will cover full earnings for 89 per cent of workers. This maximum would increase assessments for 24 per cent of assessed employers by 7 to 10 per cent. It would have no change on the projected average assessment rate.[69] The wage level of the workers who are injured will drive the impact on the current year costs and administration fees for self-insured employers.

On August 24, 2001, the board of directors of the Workers' Compensation Board resolved that it "strongly believes the level of maximum assessable earnings should be enhanced."[70] At the same time, the directors recommended to government that it reduce the 152 per cent in the regulations to 144 per cent of the average industrial wage to undo the impact of the Statistics Canada change. The impact of the change will be on higher wage earners and their employers. Most employers and workers will not be affected. The board did not give workers and employers notice of either the proposed change or the impact of not making a change.

The government did not accept the recommendation. It amended the regulation to reduce the percentage to 140.2 per cent. When applied to the Statistics Canada average industrial wage at March 31, 2001 (using NAICS) the maximum insurable and assessable wage for 2002 is maintained at the 2001 amount of $41,100.[71] This rate will cover the full wages of 84 per cent of covered workers.[72]

The committee endorses the established approach to adjusting the maximum. It has been a principled approach. There are clear benefits for the workers' compensation program and workers with a higher percentage of income protected against wage loss. There will be a one-time significant increase, but no change should be made to offset the impact of Statistic Canada moving to the standard used by Canada's NAFTA trading partners.

Review Topic 12
Is the level of maximum assessable/insurable earnings appropriate?

Response
A maximum assessable/insurable earnings at 152 per cent of the average industrial wage as determined by Statistics Canada in accordance with the North America Industrial Classification System is appropriate. For 2002, this would be $44,300.

7.11 Calculating Earnings Replacement Benefits

Calculating earnings replacement benefits is a daily board activity that received repeated, critical comment at the public meetings.

Beginning with the injured worker's "gross average earnings" prior to the injury, the worker's net average earnings before the injury is calculated. The "gross average earnings" are calculated "over a period up to three years immediately preceding the commencement of the loss of earnings." It is expressed as a weekly amount.[73] Before 1996, the period was one year.[74]

The purpose of compensation benefit payments is to replace lost earnings. Averaging earnings over too short or too long a period a period of time can distort the amount of the lost earnings.

Within the three-year period prior to the loss of earnings, the board may choose "any period that, in the opinion of the board, allows it to best represent the actual loss of earnings" and it may "vary the period from time to time."[75] In no case can the board choose a period that results in a weekly amount higher than the weekly amount for the "most recent year."[76] In this way the former one-year period was retained to limit benefits paid.

For Temporary Earnings Replacement Benefits (TERB), the board's policy directs that the normal rate of pay prior to the injury will be used. This includes regular overtime, commissions, tips, vacation pay and other remuneration.[77] The intent is to determine an earnings profile simply and quickly for the first 26 weeks of payments.

For Extended Earnings Replacement Benefits (EERB), a more detailed profile of pre-injury income is developed. It includes overtime that is not regular and unemployment insurance benefits, except Employment Insurance maternity or paternity benefits.[78]

The long-term profile is used for EERB, survivor benefits and Permanent Impairment Benefits (PIB).

The board's stated rule is to choose the period that "best represents" the actual loss of earnings. The committee heard from injured workers that the board always chooses a period that results in the lowest weekly amount.

The board advises that 70 per cent of EERB payments are for workers with regular full-time employment. For these claims, the board uses the earnings for the 12 months prior to the injury.[79]

Looking to past earnings to determine future wage loss may not fairly represent future earnings loss for young workers. The board may use other methods to determine the worker's earnings when the worker is young, a learner or has concurrent employment.[80] Since 1996, there has been only one claim by a worker under thirty years of age in which earnings higher than past earnings were applied to determine loss of earnings.[81]

Probable payroll deductions for income tax, Canada/Quebec Pension Plan, unemployment insurance premiums and others prescribed by regulation are deducted from the "gross average earnings."[82] The "probable" deductions do not have to be the actual deductions. The resulting amount is the "net average earnings." The net average earnings and the applicable maximum wage rate are to be calculated as of the date of injury.[83]

The "loss of earnings" to be replaced is the net average earnings less any amount the worker is actually earning or is capable of earning in suitable and reasonably available employment[54] and 50 per cent of any CPP/QPP benefits the worker receives or is entitled to receive.

The rationale for the reduction of loss of earnings by 50 per cent of the CPP disability benefit is the fact employers contribute one-half the premiums for CPP and a CPP disability benefit is to replace earnings loss.[55] The board regularly receives benefit information from the Canada Pension Plan.[56]

To be eligible for CPP benefits, the individual must be disabled from working and the disability must be severe and prolonged. The individual does not have to be employed at the time of disability or for several years previous. "Severe" means prevented from working regularly at any job, and "prolonged" means the condition is long term or may result in death.[57]

In some cases, a worker will receive CPP disability benefits and be considered by the board as capable of working in suitable and reasonably available employment. This can be because the worker has medical conditions that are not work-related. CPP pays benefits based on "disability", which includes both the physical and economic effects of a medical condition. Workers' compensation pays a benefit for the physical loss (PMI) separately and uses different criteria to determine the earnings loss (EERB) on the assumption physical impairment will not always mean earnings loss.

Workers argue a CPP disability benefit is based on different criteria than that applied for workers' compensation programs. There is no requirement to demonstrate a pecuniary loss and the benefit is not awarded as an earnings loss replacement. They rely on a 1998 decision of the Ontario Court of Appeal that held CPP disability benefits should not be deducted from damages awarded under the provincial insurance statute. Leave to appeal to the Supreme Court of Canada was denied.[58]

New Brunswick asks wage information for 16 weeks on the Accident Report Form. The wage rate is established based on that information. New Brunswick pays 85 per cent of net from beginning to end of claim (does not include pensions). The 16 weeks wage information used to set the rate initially includes all wages from any employer (assessed or non-assessed) and any employment insurance benefits received in that period.

If it is determined the claim will be long term (more than a week or two), it is moved to a Case Manager (near the beginning of the claim) who does a one year wage review immediately upon receiving the claim. The Case Manager requests one year of wage information, which again includes employment insurance benefits and all earnings from any employers. Based on this information the rate will be adjusted. All claims, whether seasonal or not, are to be treated this way.[89]

Newfoundland also has an initial rate and a long term rate which are both paid at 80 per cent of net. The initial rate is paid up to 13 weeks and is based on four weeks earnings preceding the loss of earnings. The four weeks includes all earnings from assessed employers and any employment insurance paid in that period.

The long term rate (after 13 weeks) is normally based on 12 months immediately preceding the loss of earnings. For seasonal workers, the board may use up to 24 months to get a more accurate pre-accident earnings profile. Again, these earnings include income from any assessed employer during this time and employment insurance benefits.[90]

In Nova Scotia, there is no minimum weekly amount payable to an injured worker.[91]

Fig 7.26 **Minimum Provincial Rates (2000)**

Province	Minimum Weekly Compensation Rate
Alberta	$247.86 or 100% of net earnings if less
British Columbia	$298.63 or 100% of earnings if less
Manitoba	$204.16 or 90% of net earnings
New Brunswick	None
Newfoundland and Labrador	$200.00 or 100% of net earnings if less
Nova Scotia	None
Ontario	$296.24
Prince Edward Island	None
Quebec	$234.16
Saskatchewan	$282.03 or 100% of gross earnings if less

The most difficult circumstances in which to determine an injured worker's gross average earnings is when the worker's employment is seasonal, casual or the injury follows a short period of employment. Section 43 states:

> Where it is impracticable to compute the earnings of a worker as a consequence of
>
> (a) the length of time the worker has been employed; or
>
> (b) the casual nature of the worker's employment,
>
> the board may determine the worker's earnings in the way that appears to the board to best represent the actual loss of earnings suffered by the worker by reason of the injury.

For Temporary Earnings Replacement Benefits (TERB), the board uses the weekly earnings at the date of injury. If earnings varied with no clear pattern, the board uses an average of a longer period, perhaps the four weeks, preceding the injury. If the worker has just begun work at the time of the injury, the board uses expected earnings as verified by the employer.[92]

About 20 per cent of workers who receive Extended Earnings Replacement Benefits (EERB) are seasonal workers or workers with irregular earnings. About 10 per cent are new entrants or re-entrants to the workforce with no established pattern of earnings.[95]

For a casual or seasonal worker, the goal is to determine a realistic amount of probable future lost earnings based on past earnings, as if the injury had not occurred. Computing earnings by reference to a longer pre-injury period will decrease gross average earnings. Using a shorter period and extrapolating it over a full year will increase gross and average weekly earnings beyond what the worker would realistically have earned. Using the day or week of injury will have the same impacts. For some it will be too high. For others it will be too low.

The workers' compensation program is intended to maintain a balance between benefits paid and the workers' earnings that form the basis for generating revenue through assessments. For this reason, unemployment insurance benefits other than those payable as maternity or parental leave benefits are not included as earnings for temporary benefits. Different considerations lead to including unemployment benefits and other forms of economic loss when determining extended earnings loss.

In general, the board's wage calculation policy is appropriate. It seeks to identify pre-injury earnings that best represent the actual loss of earnings. However, the committee has been unable to respond to the submissions from injured workers and their advocates by determining whether the board's day-to-day practice takes a balanced approach to this central issue in earnings loss calculation.

The critical issue is whether the board is paying long term sub-subsistence benefits for seriously injured workers. The board's policy and practice cannot fairly address this issue because the statute does not provide a minimum weekly amount of compensation. If it did, the issue of calculating earnings replacement for injured workers with prior periods of no, or unusually low, earnings would be less discretionary and the outcomes would leave fewer injured workers receiving sub-subsistence compensation.

Review Topic 7
Is WCB policy and practice for calculating earnings replacement benefits appropriate, in particular relative to claimants with prior periods of no or unusually low earnings?

Response
The board should use a pre-injury period of time that is more certain and less discretionary. For workers with prior periods of no, or unusually low earnings, a minimum amount of earnings to be determined by policy should be used as deemed earnings for the worker.

7.12 Permanent Impairment Benefit (PIB)

A Permanent Impairment Benefit (PIB) compensates an injured worker when there is a permanent loss of physical ability of a particular body part or area as a result of a workplace injury.[94] It is paid for life and may be periodically reviewed and adjusted.[95] This benefit is to compensate for loss of enjoyment of life as a consequence of the injury.[96] Therefore, it is not equal to full wage loss replacement.

Eligibility is determined by a review of the medical information on the worker's file, as well as a medical assessment performed by a board Medical Advisor. The assessment is used to assist the caseworker to determine a Permanent Medical Impairment (PMI) rating. This is used, in part, to calculate a PIB. The board uses the American Medical Association's Guidelines to the *Evaluation of Permanent Impairment – Fourth Edition* to determine PMI.[97]

The amount of the benefit is determined by multiplying 30 per cent of 85 per cent of the worker's net average earnings by the PMI percentage ((30 per cent x 85 per cent net average earning = 25.5 per cent net average earnings) x PMI = benefit).[98] The board explained the selection of the 30 per cent factor as follows:

> The 30 per cent factor was arrived at by the Minister's Advisory Group for Bill 122[99] (officials from 4 or so

government departments), the Nova Scotia Department of Finance, and the outside actuary, as the per cent that was thought to balance the funding equation.

The costing model is based on blinded income tax results on post accident earnings from Revenue Canada for a sample of approximately 1000 PMI recipients. That model was driven significantly by the actual earnings loss numbers reported to Revenue Canada, the Government Guaranteed Discount Rate and an assumption that the CPI (inflationary costs) would exceed the growth in assessable payroll by 1 per cent. This was half as much as had occurred in the previous 20 years.

The 30 per cent PMI number was a balancing number assuming that Government decided to hold the assessment rate. It did decide to hold the assessment rate, but increased the amount of the long term benefit from 80 per cent to 85 per cent and funded that by an annual contribution of $4.6 million in each of the first 5 years. This is documented at a high level in the long term funding strategy.[100]

7.13 Temporary Earnings Replacement Benefit (TERB)

Temporary Earnings Replacement Benefits (TERB) are usually paid every two weeks for as long as the injured worker is medically unable to return to work.[101] This is compensation for economic loss.

For the first 26 weeks the TERB is equal to 75 per cent of the worker's net earnings loss less any amount paid as a Permanent Impairment Benefit (PIB). If a worker is off work due to the accident for more than 26 weeks, the TERB increases to 85 per cent of net earnings loss less PIB.

Fig 7.27 **Average Short Term Earnings Loss Replacement Cost per Claim (1991-2000)**

	Payments	Claims	Average $
1991	50,844,607	27,906	1,822.00
1992	49,492,119	15,552	3,182.36
1993	52,232,840	17,311	3,017.32
1994	46,681,774	16,735	2,789.47
1995	37,681,810	13,980	2,695.41
1996	25,634,598	10,676	2,401.14
1997	19,782,402	10,208	1,937.93
1998	22,048,129	10,136	2,175.23
1999	25,998,735	10,836	2,399.29
2000	30,285,881	11,870	2,551.46

The increase in 2000 follows an 11 per cent increase in accepted time loss claims over 1999 and an increase in average duration from 82.56 days to 85.54 days.

7.14 Extended Earnings Replacement Benefit (EERB)

The Extended Earnings Replacement Benefit (EERB) compensates an injured worker for a permanent loss of earnings. It is based on the difference between the worker's earnings before the accident and earnings or ability to earn after the accident. This difference is called the worker's "earnings loss."

An injured worker is entitled to an EERB if the difference between the earnings loss and any PIB is greater than zero.[102]

Fig 7.28 **Average Long Term Earnings Loss Replacement Cost Per Claim (1991-2000)**

	Payments	Claims	Average $
1991	37,445,621	12,044	3,109.07
1992	38,105,156	12,186	3,126.96
1993	34,570,000	11,276	3,065.80
1994	30,910,758	10,903	2,835.07
1995	30,749,117	10,285	2,989.71
1996	51,451,254	13,929	3,693.82
1997	42,500,389	14,063	3,022.14
1998	42,520,311	11,154	3,812.11
1999	46,027,060	11,626	3,958.98
2000	51,826,022	12,033	4,306.99

The higher amount in 1996 is because several claims from the window period (March 23, 1990 to January 31, 1996) were waiting implementation of the new statute. Others were converted from AIEL benefits.

A worker receiving an EERB that is less than 100 per cent of the earnings loss may return to work after the injury and suffer another injury. The worker is entitled to receive a TERB.[103]

When the EERB was first enacted, the board used an internal Case Review committee to review each decision to ensure consistency in decision-making, tone of written communications and quality. The committee was disbanded in 1999 and Assistant Managers are responsible now to review these decisions.[104]

Each EERB is to be reviewed after 36 months.[105] No increase or decrease is made if the adjustment is less than 10 per cent of the current compensation. The first group of approximately 100 EERBs were reviewed in 1999. The second year, approximately 100 more were reviewed. The number to be reviewed in 2002 will be 572, of which 567 are chronic pain decisions under section 10E.[106]

A further review is possible 24 months after the 36-month review. The first group for this review will arise in 2002.

The crucial judgement made in determining the amount of extended earnings loss is the determination of the amount an injured worker is "capable of earning in suitable and reasonably available employment."[107] This is the point at which there are disputes about whether relatively minor injuries cause total or near total impairment. The Court of Appeal said in 1990: "Indeed, in some cases, there may be a total impairment of earning capacity with a relatively smaller degree of physical impairment as defined by the medical doctor."[108]

The earnings loss system is only five years old. Already, there are a growing number of disputes and appeals[109] and increased dissatisfaction with these determinations or estimations of earning capacity. The board decision-makers are "deeming" that workers are capable of earning wages in employment the workers believe they cannot do, is not suitable for them or is not reasonably available.

"Deeming" is where the disputes arise over whether a total impairment of earning capacity has resulted from a small degree of physical impairment. Workers protest that, for financial reasons, the board does not recognize the full consequences of physical impairments. They argue that Nova Scotia does not have enough parking lots for all the workers deemed capable to be employed as parking lot attendants.

The conflict over the amount, if any, to be deducted from the amount of benefits will intensify. Is it to be the amount an injured worker actually earns or an amount the worker is deemed capable of earning? This conflict is now an ever-present feature of the program and will be central in all future reviews.

This is an area of board discretion that requires constant and close attention by those governing the program. It is an area where management should be challenged to maintain extensive data and to develop a program performance measurement.

7.15 **Maximum Compensation**

A worker may have suffered more than one injury and can be eligible for more than one benefit.

The aggregate of benefits, excluding survivor benefits, cannot exceed 75 per cent or 85 per cent of the net maximum assessable earnings, unless the benefits from a former act exceed the net maximum assessable earnings.

> 48 (1) Notwithstanding any other provision of this Part, the total amount of compensation payable to a worker pursuant to this Part and any predecessor act shall not exceed
>
> > (a) seventy-five per cent of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings; and
> >
> > (b) eighty-five per cent of the net maximum earnings for the most recent year in which the worker suffered an injury resulting in loss of earnings, after the worker has received compensation pursuant to clause (a) for a total of twenty-six weeks.
>
> (2) To give effect to subsection (1), the board may
>
> > (a) consider the length of time a worker is in receipt of any compensation during any year and the resulting effect on probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums, or unemployment-insurance premiums payable by the worker, and recalculate the compensation based on those considerations;
> >
> > (b) deem any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan premiums, Quebec Pension Plan premiums, or unemployment-insurance premiums payable by the worker to be earnings that the worker is capable of earning after the injury;

> (c) deduct from compensation to which the worker may become entitled to prevent any payment of compensation in excess of the amounts set out in subsection (1);
>
>> (d) prescribe, by regulation, criteria to reduce the deduction referred to in clause (c);
>>
>> (e) consider any compensation paid in excess of the compensation set out in subsection (1) to be overpayments of compensation.
>
> (3) Subsection (1) does not apply to any worker who was, on the date this Part comes into force, receiving compensation pursuant to a predecessor act the total amount of which exceeded the amounts set out in subsection (1), until there is for any reason a decrease in the amount of compensation payable to the worker so that the compensation payable to the worker is equal to or less than the amount set out in subsection (1).[110]

In calculating the maximum for a worker, that worker's individual tax credits and Canada Pension Plan and unemployment insurance premiums are considered, not average or scheduled deductions.[111] Past commuted benefits are not included to determine if present benefits exceed the maximum.

Fig 7.29 **Section 48 Deductions (1996-2000)**

	Number of Deductions	Total Deducted	Number of Claims with Deductions
1996	800	$ 47,786.16	167
1997	1,644	$ 87,724.17	251
1998	1,468	$ 71,566.78	225
1999	1,717	$ 91,936.35	249
2000	2,442	$110,416.51	340

Review Topic 14

In certain circumstances the amount of a worker's temporary earnings replacement benefits are reduced by the amount of any pension being paid under the former act for a permanent medical impairment, as required by subsection 48(1). Should there be a maximum level of compensation payable to a worker who receives multiple WCB payments? If so, is the current maximum level appropriate?

Response

The circumstances are not frequent and anomalous. As time passes, they will become less frequent. No change should be made to section 48(1).

8. Adjudication, Medical Opinions and Appeals

> The Canadian model of workers' compensation has always included a centralized public agency as the vehicle for administering the program.... In a field as conflict-prone as this one, it is understandable that the leaders and employees of this large bureaucracy should serve as the lightening rod which attracts the deeply-felt grievances of workers – and some employers – about the character of workers' compensation in this province.... The main battle terrain is claims adjudication.[1]

8.01 Primary Adjudication

"Injured workers become involved in this system through accident, not choice."[2] When they consider they are entitled to benefits, they make an application to the Workers' Compensation Board.[3]

Claims adjudication is the board's most important responsibility. Fair decisions and fair and reasonable treatment of workers and their families requires fair rules, fair processes and fair-minded individuals making the decisions. The rules come from the statute and the board of director's published policy and procedures guiding the administration of the statute.

Consistent decision making is a desired goal. An informed person should be able to confidently predict the decision of the board regardless of the case worker or manager assigned to the claim.

The adjudication process is based on informal, flexible and timely inquiry. This inquiry approach places a great responsibility on the employees of the board whose job it is to conduct thorough investigations, gather the relevant evidence, weigh it and make the critical decisions. In doing this, they must appropriately apply the burden of proof.

This inquiry based adjudication process gives limited benefits, uses an administrative decision-making process and denies the worker a right to a hearing. It must balance the process by giving the benefit of any doubt to the worker.[4] Otherwise, it encourages litigation through appeals and constant legislative revision.

The administrative structure of the adjudication process often leads to conflict between workers and their primary contact with the board, i.e., the case worker assigned to adjudicate and manage the worker's claim.

The case worker must communicate clearly and accurately to workers and employers and support their decisions with thorough explanations and detailed reasoning. Today, workers and employers will accept nothing less.

It is the case worker's job to make sure workers understand the decisions they make as well the reasons for the decisions and their consequences. This requires patient understanding of the frightening situation that injured workers and their families face when unanticipated events intervene in their lives, shatter plans and cause pain. The complaints workers expressed to the committee often were more concerned with the nature of the communication from the board and its lack of empathy with their situation than with the substance of an adverse decision.

The acceptance of a claim can begin a long relationship between the worker and the board in which the board is represented by one or many successive case workers who will make many decisions affecting the worker and his or her family. A frequent refrain in the submissions to the committee was that workers experienced a succession of case workers with disparate knowledge and interest in their claim.

The case worker's role is not to negotiate with the worker and employer, but to decide each issue in accordance with the statute and published policy. The intention is that economically vulnerable, disabled persons will receive benefits to which they are entitled without delay on initial adjudication or appeal. They do not have to negotiate for benefits from a position of weakness.

Investigation, adjudication, decision-making and communication of decisions are at the heart of the board's mandate. These are performed by individuals with lives and families outside their work. They are subject to stresses and weaknesses. It is crucial that the board have well-qualified, well-suited and well-trained persons with sufficient time and resources to adjudicate.

The board has a program for the orientation and training of new employees and their continuing education.[5] It includes sensitivity training. The board uses surveys and other tools to measure the quality of primary adjudication and communication.

The relationship between the case worker assigned a claim file and the worker receiving compensation benefits can be the most critical aspect of the ongoing supervision and receipt of benefits. The board has the authority to withhold, suspend, reduce or terminate benefits because the worker has failed to co-operate with the board (as determined by the case worker.)[6] Surprisingly, the board does not have data on how often or in what circumstances its employees exercise this power. The power can also be exercised in administrative ways that will punish a worker, such as delay in acting or placing the implementation of a successful appeal at the bottom of the pile of files.

Some injured workers went out of their way in their public presentations to praise the caring attention they received from board employees. "She's an 11 out of 10," said one worker about her case worker. The majority of injured workers who appeared before the committee, however, expressed frustration and anger with their loss of control. They questioned the understanding, reasonableness and motivation of directions they received from board employees. They felt threatened and coerced. Comments heard included: "How come everything is no, until you go and fight for it?" and "The board hears what the board wants to hear."

There is a clear power imbalance in the worker and case worker relationship. Many workers feel they live at the sufferance, even whim, of their case worker. Injured workers, who were once in control of their lives and responsible for themselves and their families, often feel helpless, demeaned and humiliated because they are injured and at the beck and call of health-care providers and board employees. They must wait at the convenience of others, but their own convenience does not seem to be a concern to others. One injured worker told the committee: "They treat you like a child. They add to your stress." Another said: "They treat you like a crook." Still another said: "If you ever get hurt, look out! Nobody cares."

Many workers expressed helplessness in holding individual decision-makers and the board accountable, when the workers are held accountable for everything they say and do or do not say or do. "They (board staff) always look for the "i" that is not dotted so they can deny you," said one worker. Many proposed that they have the right to sue individual decision-makers and lawyers working within the program.

All workers' compensation programs are experiencing more complex claims. They are also experiencing more claims arising from iatrogenic conditions that present increased severity, complications or new injuries induced by medical treatment.[8] These are difficult for workers and the board to discover and invariably the board decides the worker's reports are disproportionate to the nature of the initial injury. They often are, but it takes time to discover medical treatment caused the increased severity. One example the committee heard about was arachnoiditis, a severely disabling and painful condition caused by the dye used to conduct diagnostic test on the spine. The arachnoid is a thin, serous membrane forming the middle of three membranes covering the spinal cord and brain.

Worker advocates funded by the program and worker and employer policy lobbyists are now common across Canada. Free representation for workers enables them to pursue new and complex claims, challenge policy and litigate for policy change.

Employer policy lobbyists establish themselves as the defenders of the Accident Fund and watchdogs of administrative expenditures and decision-making. Experience rated assessments provides some incentive for individual employers to dispute claims and employers contest and employ persons to contest claims.

The extent of litigation and controversy about workers' compensation programs has increased. There are more elaborate decision-making processes, which include appeals and formal fact finding hearings with extensive arguments on law and policy. Both worker and employer advocates urge appeal tribunals to rewrite existing policy, change existing benefit entitlements, make policy on pioneer claims or fill in the policy voids. The more workers and employers are excluded from policy development, the more they rely on litigation to affect policy.

Rehabilitation initiatives and employer and worker duties can contribute to appeals about re-employment and rehabilitation entitlements.

At primary adjudication, claims come to individual case workers from new time loss claims, requests to reopen claims, returns from appeal decision-makers and scheduled review of established claims.[9] The number of returns from appeals has declined since the appeal backlog was retired.[10] The number of recurrences or reopenings of claims has declined in recent years. The large number of reopenings in 1991 and 1992 from accidents in 1989 and 1990 is one indicator of the impact of the court of appeal decision of March 23, 1990.

Workload assessment and staffing allocation to provide timely, consistent and quality service must account for all these sources of work at primary adjudication and case management as part of the workload factor. On average, recurrences or reopenings, appeal returns and scheduled reviews may be more time consuming and complex than an average new time loss claim. An increase or decrease in time loss claims is only one indicator of a changed workload.

The board has become more current in dealing with claims.

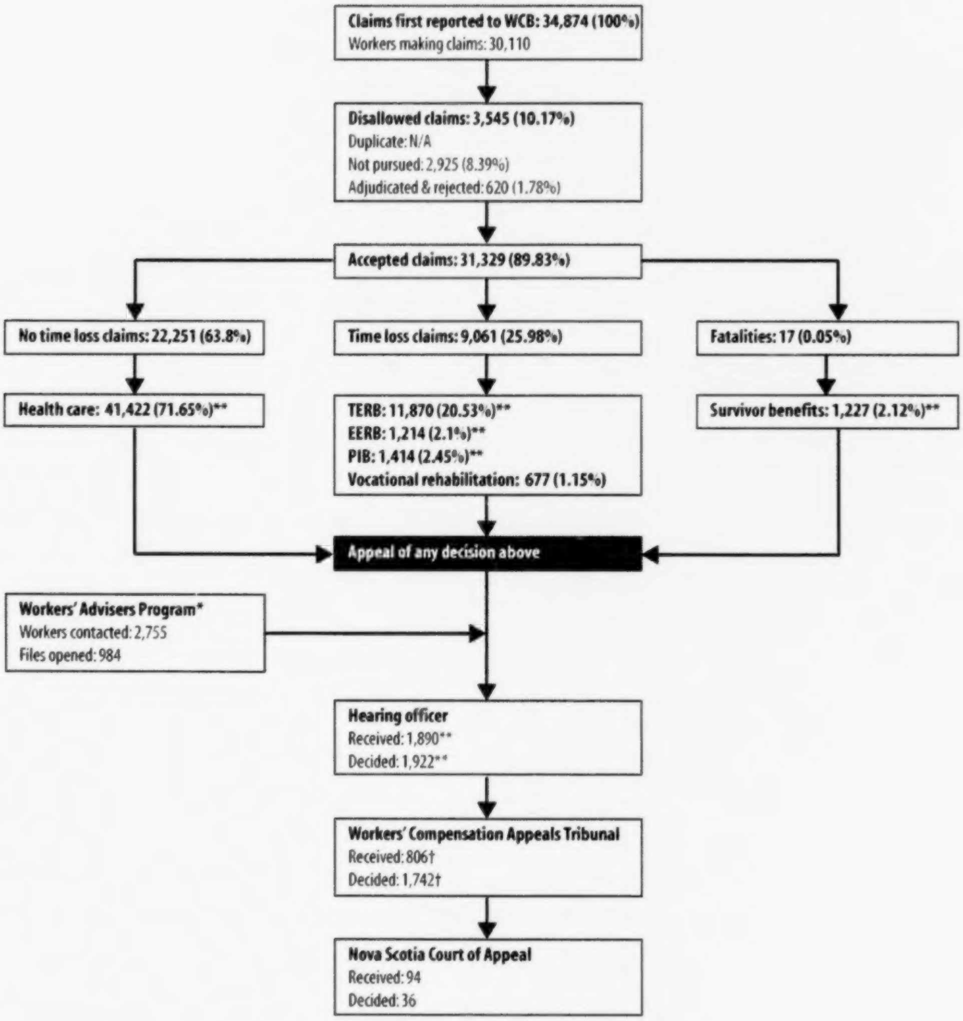
Fig 8.1 **Recurrences/re-openings (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Time Loss Claims										
Current Year	12,733	11,920	13,395	13,306	10,515	7,995	8.192	8,170	8,200	9.061
Minus 1	11,289	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200
Minus 2		11,289	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170
Minus 3			11,289	12,733	11,920	13,395	13,306	10,515	7,995	8,192
Minus 4				11,289	12,733	11,920	13,395	13,306	10,515	7,995
Minus 5					11,289	12,733	11,920	13,395	13,306	10,515
Minus 6						11,289	12,733	11,920	13,395	13,306
Minus 7							11,289	12,733	11,920	13,395
Minus 8								11,289	12,733	11,920
Minus 9									11,289	12,733
Recurrences/Reopenings										
Current Year	923	480	405	190	132	112	83	56	53	41
Minus 1	2,197	820	422	352	153	225	107	60	52	76
Minus 2	577	552	247	199	114	238	131	37	39	27
Minus 3	139	276	222	152	83	302	149	79	30	21
Minus 4	73	113	83	158	65	358	125	65	55	12
Minus 5	51	104	61	77	89	141	135	60	31	14
Minus 6	23	45	47	52	44	179	88	64	43	10
Minus 7	24	21	39	40	32	68	97	59	31	11
Minus 8	23	31	19	26	27	45	38	61	32	15
Minus 9	25	21	24	17	19	40	22	26	59	18
All Others	103	164	128	170	114	168	109	110	119	63
Ratio/Accident Year										
Current Year	7.25%	4.03%	3.02%	1.43%	1.26%	1.40%	1.01%	0.69%	0.65%	0.45%
Minus 1	19.46%	6.44%	3.54%	2.63%	1.15%	2.14%	1.34%	0.73%	0.64%	0.93%
Minus 2		4.89%	1.94%	1.67%	0.85%	1.79%	1.25%	0.46%	0.48%	0.33%
Minus 3			1.97%	1.19%	0.70%	2.25%	1.12%	0.75%	0.38%	0.26%
Minus 4				1.40%	0.51%	3.00%	0.93%	0.49%	0.52%	0.15%
Minus 5					0.79%	1.11%	1.13%	0.45%	0.23%	0.13%
Minus 6						1.59%	0.69%	0.54%	0.32%	0.08%
Minus 7							0.86%	0.46%	0.26%	0.08%
Minus 8								0.54%	0.25%	0.13%
Minus 9									0.52%	0.14%
Total (Propensity)	26.71%	15.36%	10.47%	8.32%	5.25%	13.28%	8.33%	5.11%	4.25%	2.67%

Fig 8.2 **WCB Claims by Year Accepted (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
No Time Loss Claims Accepted	22,817	20,778	20,380	18,865	19,973	19,164	19,970	20,532	22,790	22,251
Time Loss Claims Accepted	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200	9,061
Fatalities Accepted	27	47	26	10	21	15	16	18	23	17
Not Pursued/ Disallowed	5,021	5,227	3,828	3,651	3,376	3,497	3,914	4,330	3,997	3,545
Totals										
Reported/Opened	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Accepted	35,577	32,745	33,801	32,181	30,509	27,174	28,178	28,720	31,013	31,329
% Accepted	87.6%	86.2%	89.8%	89.8%	90.0%	88.6%	87.8%	86.9%	88.6%	89.8%
% Disallowed	12.4%	13.8%	10.2%	10.2%	10.0%	11.4%	12.2%	13.1%	11.4%	10.2%

Fig 8.3 **Claims Flow Statistics – 2000 (current year data)**


Claims first reported to WCB: 34,874 (100%)
Workers making claims: 30,110
Disallowed claims: 3,545 (10.17%)
Duplicate: N/A
Not pursued: 2,925 (8.39%)
Adjudicated & rejected: 620 (1.78%)
Accepted claims: 31,329 (89.83%)
No time loss claims: 22,251 (63.8%)
Time loss claims: 9,061 (25.98%)
Fatalities: 17 (0.05%)
Health care: 41,422 (71.65%)**
TERB: 11,870 (20.53%)**
EERB: 1,214 (2.1%)**
PIB: 1,414 (2.45%)**
Vocational rehabilitation: 677 (1.15%)
Survivor benefits: 1,227 (2.12%)**
Appeal of any decision above
Workers' Advisers Program*
Workers contacted: 2,755
Files opened: 984
Hearing officer
Received: 1,890**
Decided: 1,922**
Workers' Compensation Appeals Tribunal
Received: 806†
Decided: 1,742†
Nova Scotia Court of Appeal
Received: 94
Decided: 36

** For year April 1, 2000 to March 31, 2001.*

*** Volume indicates all payments made in the year regardless of year of injury.*

† All appeals received or decisions rendered in the year regardless of year of injury.

8.02 **Board and External Medical Opinions**

Information about an injured worker's health and medical conditions is crucial to the initial adjudication of a claim, the ongoing management of the claim and a worker's continued entitlement to medical aid and other benefits.

The committee has concerns that the board requires recurring periodic visits to physicians on a weekly or other basis when it is clear the worker will not be able to return to work for a longer period because of the nature of the injury. In this situation, more opinions incur more cost, but not necessarily more useful or informative medical reports.

A worker claiming compensation can be required to undergo a medical examination if the request to do so is reasonable.[11] A hearing officer or a Workers Compensation Appeals Tribunal commissioner can request an external medical opinion.[12] The Workers' Adviser Program (WAP) can obtain an external opinion for a worker it represents.[13] The appeal tribunal can seek the co-operation of the WAP to obtain a further opinion or refer the matter back to the hearing officer.[14]

Board physicians are available to provide information, undertake research, give opinions and facilitate the delivery of medical aid to injured workers.[15] The board employs six physicians in its medical department as medical advisors.

Board medical advisors are most experienced in applying the board's Permanent Medical Impairment Guidelines. As a consequence, their opinions are often preferred over the opinion of a treating or other physician who does not regularly work with the board or American Medical Association Guides or who does not state which guide was relied upon to reach an impairment-rating opinion.

The adoption of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (4th ed.) has created a new standard for workers injured after January 1, 2000.[16] The committee notes there will likely be enduring complaints that workers injured prior to that date have been, continue to be, or will be disadvantaged.

Delay in obtaining a Permanent Medical Impairment (PMI) rating from the board's medical advisors was a recurring complaint to this committee. A PMI is a prerequisite to receiving Extended Earnings Replacement Benefits (EERB). The delay may result in a worker having Temporary Earnings Replacement Benefits terminated and no EERB begun for some time because a PMI assessment has not been done. The board will often make a retroactive EERB award when the PMI is done, but, in the meantime, the worker and family suffer the hardship of being without an income. The board reports the *average* time from referral to receipt of the written report from the medical advisor is six to eight weeks.[17]

Another complaint is the difficulty workers with a current PMI have in gaining access to the medical advisers to have a new assessment to determine if their condition has deteriorated. The committee was told workers are denied an assessment because, on a review of the file, a medical advisor determines there has been no deterioration and therefore no assessment is warranted.

The distribution of new PMIs by year-of-accident discloses that most current year PMIs arise from accidents that happened several years ago. Many of these may be reassessments of workers with an existing PMI. In 2000, the year-of-accident distribution was closer to what would be expected than the distribution in immediately preceding years. The distribution in 1991 and 1992, when a higher percentage were from the two previous years, is closer to what would be expected.

The number and accident year distribution of PMI awards throughout the past decade also reflects the delay in responding to the Court of Appeal decision of March 23, 1990.

Fig 8.4 **Accident Year of New PMI Awards (1991-2000)**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
New awards	1,414	1,314	12	6	2	3,614	1,264	903	1,307	1,374
Current year	69	48	19	2	1	37	75	61	75	117
Minus 1	513	499	24	3	0	338	326	320	318	384
Minus 2	360	282	15	1	0	504	226	161	207	249
Minus 3	186	165	18	0	0	648	118	76	82	127
Minus 4	83	99	4	0	1	773	107	40	103	64
Minus 5	42	49	1	0	0	400	121	29	107	67
Minus 6	17	24	1	0	0	320	88	42	93	54
Minus 7	12	20	1	0	0	191	58	34	93	61
Minus 8	14	10	2	0	0	99	35	27	73	58
Minus 9	15	18	1	0	0	69	14	28	62	44
Total*	**1,311**	**1,214**	**86**	**6**	**2**	**3,379**	**1,168**	**818**	**1,213**	**1,225**

**Totals vary from "new awards" as data has been truncated at the 10-year mark. Totals include PMIs awarded for accidents occurring before 1990.*

A medical opinion from a board medical advisor or an external health-care professional is required under 20 board policies.[18]

On occasion, the board's medical advisor will arrange for an independent external medical examination. The circumstances when this is done include the following:

1) two or more physicians who examined the worker have differing opinions;

2) the worker's recovery is not progressing as expected;

3) some cases of occupational disease;

4) there is a question about the work-relatedness of a worker's death;

5) a second or third opinion is required regarding surgery;

6) there is a request from a hearing officer or a WCAT appeal commissioner.

The basis for the external medical opinion is information from the board file and/or an examination of the worker.

On occasion, telephone conferences are arranged between board physicians and treating physicians or specialists to clarify and resolve issues. More often, the communication will be in writing.[19]

The 1998 select committee recommended that the WCB do a proactive education program for doctors on the system's complexities and the role of medical diagnosis and treatment within workers' compensation. Throughout September and October 1999, six information sessions, attended by 75 physicians, were organized for family physicians and specialists at five locations. They were organized as part of the Dalhousie University's Continuing Medical Education program for which the attending physicians could receive credits.[20]

Adjudicators must review and assess medical reports and weight medical evidence. Part of the board's competency qualifications for decision-making positions is knowledge of medical terminology. Adjudicators, case managers, vocational rehabilitation counsellors and hearing officers review medical opinions from board medical advisors and the worker's treating physicians and specialists in their decision-making. Sometimes there are conflicting opinions.

Non-medical opinions by physicians may receive little weight. These may be opinions on retraining or the demands of a job or worksite that the physician may not be familiar with. Opinions unsupported by objective evidence or based on erroneous facts or assumptions will be given less weight than opinions that are supported by objective evidence and based on a correct understanding of the facts. The extent of the opinion giver's expertise and the degree of support for the opinion in medical literature will be relevant in weighting opinions. The degree of certainty or firmness of the opinion will be considered.

The board has a policy on weighting conflicting medical evidence.[21] It sets out general principles to be applied by decision-makers.

> 1.1 A statement by a lay witness on a medical question may be considered as evidence if it relates to matters recognizable by a lay person; but not if it relates to matters that can only be determined by a person with expertise in medical science.

1.2 When addressing conflicting medical evidence, decision makers will not automatically prefer the medical evidence of one category of physicians or practitioners over that of another. Decision makers shall consider the following criteria in deciding what weight to give to such evidence:

(a) the expertise of the individual providing the opinion

(b) the application of the expertise of the individual providing the opinion to the medical question being addressed

(c) the correctness of the facts relied upon by the provider of the opinion

(d) the timeliness of the opinion

(e) any issues of credibility within the opinion

(f) the credibility of the individual providing the opinion

(g) subjective versus objective medical evidence

(h) the findings of any relevant scientific studies referenced by a qualified medical practitioner

(i) the fact that treating physicians may have an advocacy role on behalf of their patients

1.3 Where the weight to give conflicting medial evidence cannot readily be determined by applying the above criteria, the decision maker may consult with a WCB Medical Advisor to determine:

(a) whether all appropriate medical evidence has been obtained; and/or

(b) if further investigations (including examination of the worker by a WCB Medical Advisor) are required.

1.4 Nothing in this Policy is intended to detract from the benefit of the doubt provisions under Section 187 of the *Workers' Compensation Act*, SNS 1994-95, c. 10, as amended.

Workers believe the expertise of specialists must be given more weight than opinions of board doctors. Under the board's policy for weighing evidence, a specialist's medical opinion would usually merit more weight.

A worker often perceives bias in the board when a board decision-maker prefers the opinion of a board medical advisor over the opinion of the worker's treating health care professional or specialist. The board does not uncritically accept the opinions of treating physicians – "diagnosis does not equal disability." Or board personnel may be sceptical of the opinion of some, or all, treating physicians. Workers may be sceptical of the opinions of physicians employed or selected by the board.

The "subjective" nature of some illnesses and injuries creates conflict between the worker and the board. When the board does not accept the treating physician's written opinion, which was based on what the worker told the physician, the board is not accepting what the worker said. This is behind many submissions that the board does not believe workers.

Often the worker does not accept the medical advisor's opinion because the medical advisor did not investigate all the individual features of the worker's circumstances. If the examination is hasty and superficial or focuses on only one aspect of the worker's condition, workers may conclude they are getting "short shrift." A few workers have brought patient advocates into the examinations and tape recorded the examination in an effort to prove it was not a complete examination.

Workers often lose trust in the board when benefits are terminated while the worker is waiting for further diagnostic procedures and the medical advisor's opinion is that there is no objective evidence to support continued disability. The awaited diagnostic process might confirm continued entitlement to benefits. If it does, a successful appeal or retroactive reinstatement of benefits does not compensate for the intervening stress and hardship on the worker and the worker's family.

The results of the diagnostic procedure or report from a specialist might not be characterized as "new evidence" and the worker may face a greater burden of persuasion than had the results been available earlier in the claim process.

Review Topic 10

Is the method for generation of internal and external medical opinions appropriate, in this and other contexts in the compensation system?

Response

The committee is unable to say if it is appropriate in all circumstances. The board should look for opportunities to standardize the format of medical opinions and ensure that conflicting opinions about the circumstances of a single worker ask and answer the same questions based on the same information. The board should not require unnecessary reports and opinions from physicians confirming what should be evident. The board should set passage-of-time or other objective standards entitling workers to PMI reassessment without having to gather medical opinions to persuade the board that a reassessment is warranted.

Since 1996 the *Workers' Compensation Act* has provided that the Minister of the Environment and Labour can establish a Medical Review Commission.[22] The minister has not made any appointments to the commission since these provisions were enacted.

The purpose of the Medical Review Commission is to provide a medical opinion when either the board or the Workers Compensation Appeals Tribunal refers a matter to it. A "medical opinion" is "a written statement of a medical conclusion and the facts and reasons on which the conclusion is based in respect of an individual worker."[23] The opinion may be a unanimous or majority opinion or the opinion of the chair of a panel of the commission. The opinion is not binding on the board or the appeals tribunal.

An opinion of the Medical Review Commission is intended to be an aid to primary and appellate adjudication. It is not intended to be a means to resolve a dispute between conflicting opinions, as in some other provinces.[24] A commission opinion does not relieve the board or the appeals tribunal from making a decision, of which the opinion is only one evidentiary source.

A worker cannot initiate a referral to the Medical Review Commission. There are other means by which the board or the appeals tribunal can obtain a medical opinion.

The 1998 select committee stated that, under no circumstances, should a non-medical opinion overrule the opinion of a paid specialist.[illegible] Its view was that where there was a concern regarding a patient's diagnosis, the independent Medical Review Commission would review the case and make a final, binding decision on matters of medicine. If the appeals tribunal requested an opinion of the Medical Review Commission, the decision of the commission would be final and binding on medical matters.

There was little enthusiasm in the submissions the committee received for proclaiming the Medical Review Commission provisions. Often there is a limited number of available specialists, who have not previously seen the worker, to serve on a panel in a complex case. Members of the existing specialist community are often tagged as worker or board partial. It is unlikely panels will be able to meet and render an opinion in a more timely or less costly manner than existing means to obtain an opinion.

Review Topic 11

Would the Medical Review Commission referenced in Sections 203-205 of the act be an effective and efficient addition to the claims investigation process? If so, what challenges need to be addressed, and what are the appropriate procedural safeguards and any mechanisms necessary to ensure the continued independence of the appeal process?

Response

No

8.03 Internal and External Levels of Appeal

The appeal system has improved demonstrably in recent years. The appeal backlog that propelled review in 1998 by the Auditor General[26] and an all-party select committee[27] has been addressed. No new backlog is accumulating. There is widespread support for the impartiality and service provided by the Workers Compensation Appeals Tribunal.

The three-level appeal system enacted in 1996 was reduced to two levels in 1999.[28] At the same time, the grounds to appeal to the Court of Appeal were broadened to include questions of law.[29] There are no limits on the grounds for appeal to either the internal or external levels of appeal.

Since the board of directors of the Workers' Compensation Board required the publication of the board's policy manual in 1993,[30] the rules governing the exercise of discretion under the act have been open to everyone. At the same time, decisions are to be made "based upon the real merits and justice of the case and in accordance with this act, the regulations and policies of the board."[31]

Both the board's internal appeals department and the external appeals tribunal are bound by policies of the board that are consistent with the act.[32] An elaborate process of referrals overseen by the chair of the board of directors is intended to allow the appropriate body, either the board of directors or appeals tribunal, to decide significant issues of law and policy.[33] It has seldom been used and has not been used to interfere with the independence of the appeal process.

Fig 8.5 **Current Claims Appeal Process**

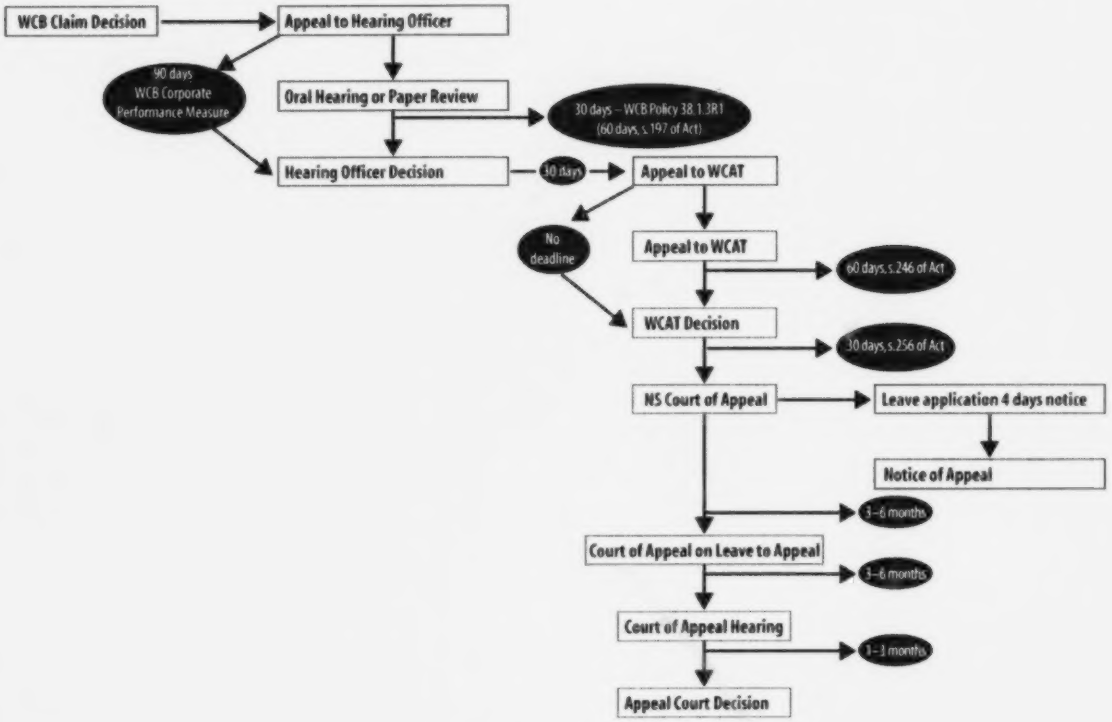

WCB Claim Decision
Appeal to Hearing Officer
90 days WCB Corporate Performance Measure
Oral Hearing or Paper Review
30 days – WCB Policy 38.1.3R1 (60 days, s.197 of Act)
Hearing Officer Decision
30 days
Appeal to WCAT
No deadline
Appeal to WCAT
60 days, s.246 of Act
WCAT Decision
30 days, s.256 of Act
NS Court of Appeal
Leave application 4 days notice
Notice of Appeal
3–6 months
Court of Appeal on Leave to Appeal
3–6 months
Court of Appeal Hearing
1–3 months
Appeal Court Decision

Fig 8.6 **Timeliness of Internal Hearing Officer Appeals in Calendar Days (1996-2001)**

(from the date the appeal was received for claim related appeals to a Hearing Officer Decision)

	1996		1997		1998		1999		2000		2001	
	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision
Jan	182.71	159.84	295.07	394.75	183.32	40.27	99.06	40.33	99.14	55.68	111.80	74.23
Feb	197.70	199.33	329.27	365.95	64.55	53.84	97.86	59.93	124.67	57.02	172.00	89.2
Mar	197.71	191.15	231.32	180.98	85.25	59.06	78	29.21	114.73	60.24	124.71	58.94
Apr	192.96	176.17	179.39	159.15	102.88	62.04	102.28	31.64	104.33	53.19	133.35	48.33
May	216.69	237.70	157.78	136.75	99.04	61.4	116.38	30	127.33	58.83	86.96	62.79
Jun	241	297.84	256.54	145.98	103.25	70.94	86	34.46	108.47	57.27	94.77	70.83
Jul	229.74	314.68	191.06	176.69	103.11	43.5	70.93	40.39	123.36	56.24	117.90	56.83
Aug	220.5	311.25	245.75	105.61	98.07	43.57	112.35	49.9	124.19	55.35	122.50	53.46
Sept	277.85	347.23	288.5	179.45	96.09	180	102.23	56.69	123.60	48.92	144.73	57.71
Oct	229.38	372.46	108.81	73.75	97.83	165.07	128.88	59.08	174.88	56.75	188.60	59.39
Nov	289.08	399.11	91.60	39.5	79.8	46.35	108.75	50.2	123.45	57.76	136.44	58.39
Dec	211.81	336.81	138.63	105.42	64.59	37.86	125.13	50.01	115.46	49.26	100.75	52.44
Average Calendar Days	224	279	209	172	98	72	102	44	122	56	128	62

In 1996, a statutory standard of 60 days was enacted for decision-making at each level.[54] The board has adopted policy directing the internal appeal department to make decisions within 30 days.[55] The board has also adopted an organizational performance measure that 95 per cent of decisions will be made within 90 days of receipt of the appeal.[56]

The internal appeals department will only grant requests to delay an appeal in unusual or exceptional situations.[57] Otherwise, it adheres strictly to its time limits. A delay in scheduling an oral hearing can be because of delays injured workers experience in obtaining assistance from the Workers' Adviser Program.

In 2000, the average time from receipt of appeal to decision by hearings officers was 56 calendar days when there was a paper review of the file and 122 days when there was an oral hearing, which was held in 15 per cent of decided appeals.

The average time from receipt of appeal to decision by the appeals tribunal was 581 calendar days when there was a paper review of the file and 593 days when there was an oral hearing, which was held in 19 per cent of decided appeals. The time was falling dramatically towards the end of 2000, when the backlog was cleared. The average time to resolve a paper review is now 150 days. For an oral hearing it is 180 days.[58] To expedite appeals, the appeals tribunal is directed to write short, to-the-point decisions that are easy to understand.[59]

The number of new appeals to the board's internal appeals department has increased in recent years, but dropped dramatically at the appeals tribunal.

The mix of issues taken to appeal has varied over the years. The number of appeals initiated by employers has increased, especially challenging acceptance of claims.

Fig 8.7 **WCB Internal Appeals Department Claims Appeals (July 1993-December 2001)**

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Appeals Outstanding from Previous Years	NA	239	605	2607	1642	225	128	326	288
Appeals Received in Year	296	742	3536	1906	1033	925	1890	1833	2092
Appeals Resolved in Year	57	376	1534	2871	2450	1022	1692	1871	2020
Outcomes									
Withdrawn	3	47	157	181	71	10	23	32	33
Accepted in Part/Entire	24	110	409	534	593	317	381	509	590
Denied	29	211	783	1700	1631	667	1165	1152	1218
Overturned by Client Services*	0	0	3	25	32	5	22	67	54
Other	1	8	182	431	123	23	101	111	125
Appeals Pending at Year End	239	605	2607	1642	225	128	326	288	360
Oral Hearing Decisions Issued	39	253	928	1065	468	262	205	251	220

Note: "Overturned by Client Services" means new information was submitted with the Notice of Appeal which was sent to the case worker for review. The decision under appeal was reversed before the appeal proceeded.

Fig 8.8 **WCAT Claims Appeals (June 1996-December 2000)***

	1996	1997	1998	1999	2000
Appeals Outstanding from Previous Years	396	1848	2586	2457	1452
Appeals Received in Year	1569	1294	1072	1434	806
Appeals Resolved in Year	80	506	1149	2303	1742
Outcomes					
Withdrawn	37	50	52	136	61
Accepted In Part/ Entire	53	204	568	1315	828
Denied	27	132	248	558	708
Returned for Further Review	0	1	4	13	21
Other resolved by 10E	0	0	0	336	147
Other resolved by Mediation	0	169	329	72	11
Correction Decisions	0	0	0	9	27
Appeals Pending at Year End	1848	2586	2457	1452	455
Oral Hearing Decisions Issued	9	32	40	192	333

** WCAT has converted its statistics to calendar year for comparison.*

Fig 8.9 WCB Internal Appeal and WCAT Outcomes by Oral Hearing and Paper Review (1993-2001)

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Hearing Officers									
Oral Hearing Decisions	39	253	928	1065	468	262	205	254	220
Outcomes									
Accepted in Part/Entire	19	97	345	358	261	160	113	190	143
Denied	20	156	583	707	207	102	92	64	77
Paper Review Decisions	11	56	264	1175	1758	724	1351	1422	1584
Outcomes									
Accepted in Part/Entire	5	8	63	178	332	158	269	337	447
Denied	6	48	200	993	1424	565	1072	1085	1136
Other	0	0	1	4	2	1	10	1	1
WCAT External Appeal									
Oral Hearing Decisions								346	208
Outcomes									
Accepted in Part/Entire								227	117
Denied								95	88
Other								24	3
Paper Review Decisions								1358	671
Outcomes									
Accepted in Part/Entire								593	223
Denied								615	408
Other								150	30

Fig 8.10 **WCB Internal Appeals Department Issues Appeals (July 1993-December 2001)**

Worker Initiated	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**
1. Recognition of Claim	1	52	271	423	486	224	258	347	280
2. New/Aditional Temporary Benefits	34	182	589	1108	757	285	432	464	593
3. New/Increased Benefits for Permanent Impairment	14	97	465	1099	980	346	441	503	518
4. Medical Aid (Expenses)	7	30	240	356	382	132	252	270	529
5. New/Additional Voc. Rehab.	8	47	147	184	132	55	46	53	44
6. New/Additional Extended Earnings Replacement Benefits (incl. estimated earnings capacity)	0	0	2	15	242	113	50	133	140
7. New Evidence?	0	0	0	0	11	40	109	115	140
8. Wage Rate/Other Calculation Issues	0	0	3	3	27	20	103	75	64
9. Survivor Benefits	0	1	10	22	43	22	33	25	24
10. Chronic Pain	0	0	62	90	91	69	234	49	55
11. Environmental Illness	0	0	12	206	97	14	14	11	5
12. Occupational Disease	0	0	0	21	200	102	113	126	109
13. All Other Issues	7	21	13	22	104	55	51	67	78
Total Worker Initiated	71	430	1814	3549	3552	1477	2136	2238	2579
Employer Initiated									
1. Acceptance of Claim	0	0	4	8	11	1	31	49	39
2. Extent of Benefits	0	0	0	0	0	0	0	9	25
3. Assessment Classification	0	0	15	12	20	17	38	15	13
4. Assessment Penalties	0	0	6	8	35	9	25	29	18
5. Other Claims Issues	0	0	0	0	0	0	2	9	8
6. Other Assessment Issues	0	0	13	13	16	13	8	17	18
Total Employer Initiated	0	0	38	41	82	40	104	128	121
Total Initiated	**71**	**430**	**1852**	**3590**	**3634**	**1517**	**2240**	**2366**	**2700**

Fig 8.11 **WCAT Appeals by Issue (June 1996-December 2000)**

Issue Description	1996	1997	1998	1999	2000	Total
1. Worker Initiated: Recognition of Claim	9	59	185	365	280	898
2. Worker Initiated: New/Additional Temporary Benefits	11	216	453	593	503	1776
3. Worker Initiated: New/Increased Benefits for Permanent Impairment	23	185	606	863	589	2266
4. Worker Initiated: Medical Aid (Expenses)	3	57	164	262	243	729
5. Worker Initiated: New/Additional Vocational Rehabilitation	6	32	71	116	53	278
6. Worker Initiated: New/Additional Extended Earnings Replacement Benefits (incl. Estimated earnings capacity)	0	1	14	99	163	277
7. Worker Initiated: New Evidence?	0	0	0	9	66	75
8. Worker Initiated: Wage Rate/Other Calculation Issues	0	0	0	3	26	29
9. Worker Initiated: Survivor Benefits	0	3	16	30	32	81
10. Worker initiated: Chronic Pain	13	1	7	113	60	194
11. Worker initiated: Environmental Illness	3	1	14	56	78	152
12. Worker Initiated: Occupational Disease	3	3	20	16	19	61
13. Worker Initiated: All Other Issues	9	5	9	14	25	62
Subtotal of All Issue Categories	**80**	**563**	**1559**	**2539**	**2137**	**6878**
1. Employer Initiated: Acceptance of Claim			1	17	8	26
2. Employer Initiated: Extent of Benefits	0	0	1	12	1	14
3. Employer Initiated: Assessment Classification	0	0	0	10	6	16
4. Employer Initiated: Assessment Penalties				10	10	20
5. Employer Initiated: Other Claims Issues					2	2
6. Employer Initiated: Other Assessment Issues			2	11	10	23
Subtotal of All Issue Categories	**0**	**3**	**1**	**60**	**37**	**101**
Total of All Issue Categories (Worker/Employer)	**80**	**566**	**1560**	**2599**	**2174**	**6979**

** Withdrawn/Dismissed removed*
** Includes Leave Decisions*

In all areas of human judgement, initial decision-makers make mistakes. Initial Workers' Compensation Board decisions can be challenged and mistakes can be corrected in review and appeal processes. The closer the level of appeal or review is to the initial decision-maker, the more the process will be an entire re-examination and re-adjudication of the matter.

Generally, the more levels of review or appeal from the initial decision-maker to an appeals tribunal, the narrower the scope of issues will be and the less opportunity there will be to introduce new evidence.

Often workers are denied the opportunity to bring forward new evidence at the hearing officer stage because the evidence is not available to them. This creates more pressure to introduce new evidence at the appeals tribunal. If the process does not wait for diagnostic test results or for the worker to attend appointments with specialists the evidence might not be available at the hearing officer stage.

The issue of process delay and allowing the introduction of new evidence illustrates the tension between those who emphasize early finality in decisions with a limited role for the appeal decision-makers and those who emphasize making correct decisions and advocate an unfettered right for full review and re-adjudication at each level of appeal. The former view emphasizes the board's residual right to review and reconsider decisions at any time. Its proponents speak of an issued-focused, "true appeal" function.[40]

> In a high volume administrative system, such as workers' compensation, the requirement of providing fair decisions as quickly as possible is paramount. When the appeal system becomes mired in delays and complexity there is no justice for the people it is designed to serve.[41]

The proponents of the latter view describe this approach as a "legalistic, technical approach." They speak of taking a fresh look and re-adjudication at each stage.[42]

The court of appeal has described the appellate role of the Workers Compensation Appeals Tribunal as "a hybrid nature combining features of appeals *de novo* with reviews of the record."[43] The deference WCAT must show to board decisions "is only with respect to the advantages the hearing officer may have in the fact finding process in any particular case."[44] WCAT does "defer to the Hearing Officer's conclusions regarding the application of discretionary benefits such as medical aid and vocational rehabilitation, in determining whether an error has been made."[45]

An internal level of appeal enables the board to oversee and correct mistakes and inadequacies in its initial adjudication.[46] This level removes a significant percentage of appeals from proceeding to the second level and refines the issues for those that do proceed to the external appeals tribunal, which can concentrate on fewer and, presumably, more complex appeals.

The external level of appeal ensures an independent review.[47] This is the stage at which a person can challenge the board in front of someone independent from the board. At this level, the board is a full participant in the appeal.[48]

There is a high degree of consistency in decision-making within each level of appeal and the rate at which appeals are allowed or denied is not exceptional. The cost of internal and external appeals is not inconsistent with the professional qualifications of the decision-makers and administrators.[49]

The appeal process is deliberately structured to be highly legal. It is exclusively staffed by lawyers. There is no room for experienced workers' compensation adjudicators, vocational rehabilitation consultants, worker advocates or others to aspire to become appeal decision-makers. The community of appeal decision-makers and the entire program could benefit from appeal decision-makers with more varied, practical and diverse experience.

The process could benefit from more proactive case management by appeal decision-makers and a willingness by the board to accept that some forms of dispute resolution, other than adjudication, are appropriate in some cases.

Review Topic 20

Are the internal and external appeal systems both necessary and working well?

Response

Yes. Both are necessary to provide the balance between internal board review of initial adjudication and external independent review of board decisions. They provide timely, consistent decisions in an efficient manner. With the retirement of the backlog, this is an opportune time for the appeal process to be opened to appeal decision-makers from disciplines other than law and to explore more proactive case management and alternate approaches to dispute resolution.

8.04 Employer Access to Documents and Records

The *Workers' Compensation Act* gives workers unfettered access to documents and records in the possession of the board.[10] For sound reasons, the worker's employer does not have equal access.

During the investigation, development and management of a claim, the board may obtain or receive extensive personal and irrelevant information about a worker. Private and sensitive personal information may be recorded because of the nature of the injury, its treatment or its consequences. Family histories, psychological profiles and a history of drug or alcohol use may become part of the file. Communications between the worker and health-care professionals, such as psychiatrists, may be recorded in the file. Information irrelevant to the worker's employment may be relevant to diagnosis, treatment and recovery of health.

A balance must be struck between what documents and records are relevant for the employer to have access to and what is to be denied to respect the privacy of the worker.

Fig 8.12 **Employer Requests for WCB Claim Files (1994-2001)**

	Self-insured Employers		Regular Classified Employers	
	Requests	**Fees Collected**	**Requests**	**Fees Collected**
1994	15	$1,338	44	$4,351
1995	34	$5,704	33	$1,973
1996	39	$4,070	28	$1,926
1997	12	$150	14	$1,230
1998	11	$83	10	$801
1999	15	$3,176	12	$448
2000	36	$279	30	$1,470
2001	7	$462	30	$1,944
Total	**169**	**$14,970**	**201**	**$14,143**

The board has the authority to determine whether a document or record in its possession is relevant to an appeal and is to be disclosed to the employer participating in an appeal. The safeguard is that a decision by the board cannot be based on a document to which the employer has been denied access.[51] The board's files and records are subject to the *Freedom of Information and Protection of Privacy Act*.[52] The board has adopted a policy on employer access to information in workers' claims files.[53]

An issue arises because the board file is not always retained in the possession of the board. At some time, during the course of an appeal, the file is physically given to WCAT. In addition, some documents to be added to the file may be given directly to WCAT after the board file has been transferred to it. The act does not state whether WCAT has authority to disclose the contents of a board file to either a worker or employer.

In the future, when the board's files are in electronic storage, a physical transfer will not be necessary. WCAT and others will have simultaneous access to the files.

WCAT should have the express authority to provide workers and employers with a copy of any document or record relevant to the appeal that it receives after an appeal has commenced. This will be more efficient than having the request and response come from the board after the file has left its possession. It is preferable that WCAT, not the board, control disclosure of documents during the course of proceedings before it. This is especially so because the board can be a participant in the appeal process.

The integrity of the external appeal process requires that all participants in the appeal have full access to all of the documents and records before the decision-maker. The balance to be struck between disclosure for appeals and privacy of the worker can be accomplished by legislation prohibiting the employer from making further disclosure or use of the documents, records and information they contain beyond the appeal proceedings, which includes any further proceedings before the court of appeal.

Review Topic 21

Should subsection 193(3) of the act be amended to require the WCB to provide an employer, who is a participant in a Tribunal appeal, with a copy of any appeal document or record in the board's possession that is relevant to the appeal?

Response

No. The act should be amended to give the Workers Compensation Appeals Tribunal this authority with a legislated limitation of the further disclosure or use of the documents, records and information they contain by the employer beyond the appeal proceedings, which includes any further proceedings before the court of appeal.

8.05 Time Limits for Submitting Evidence to WCAT

The Workers Compensation Appeals Tribunal may consider "any additional evidence the participants present", subject to making a referral back to the hearing officer.[54] WCAT may refer any matter in connection with an appeal to the hearing officer for reconsideration "where, in the opinion of the presiding appeal commissioner, the quantity or nature of new or additional evidence or the disposition of the appeal merits the referral."

A referral relieves WCAT from meeting its 60-day time limit to make a decision.[55] Any subsequent appeal receives priority to appeals commenced after the date of the referral.[56] There may be circumstances when WCAT must make a referral, rather than an initial adjudication on a matter.[57]

New or additional evidence is a frequent ground for appeal. Most often it is medical evidence. WCAT uses its authority to set times within which new evidence and submissions to it must be presented. It may extend any time limit where an injustice would result from strict adherence to the time limit.[58]

Hearing officers may consider "any additional evidence the participants present."[59] They do not make referrals back to initial adjudicators, although new evidence may prompt the board to review and overturn a previous decision. The board has adopted a policy giving hearing officers discretion to exclude late-submitted evidence. It states in part:[60]

> (c) Where written submissions or evidence are forwarded by the requester after the 30-day time limit has expired, the Hearing Officer may consider the reasons for the late filing of the information and may, based on the reasons given, make a decision on whether the information will be considered in the appeal.
>
> (d) Where appropriate, where the board has not received the information required by subsection (b) within the 30 day time limit, the appeal shall not be carried out, and the staff member's decision shall be the final decision of the board.

WCAT has a common law and statutory duty to accept late-submitted evidence until it has rendered its decision.[41] Since 1996, the incidence of appeals based on new evidence has risen steadily (see Fig 8.10 and 8.11).

There is no data on how often a party presents evidence late in the process or how extensive the delays have been because one party presented evidence late.

Delay in presenting additional evidence may not be the fault of a party or one person. Any number of events or circumstances may cause delay. Workers have no control over the timing of diagnostic tests, specialist appointments and medical reports. The board has made efforts to expedite access to orthopedic surgeons and MRI testing. The board informed the committee that:

> Orthopedic surgeons are the specialist to which WCB clients are most frequently referred, and a commonly requested test for which there is often an extended wait is the MRI. Under normal circumstances, it takes approximately 6 weeks to be seen by an orthopedic surgeon and approximately 16-20 weeks to get an appointment for MRI testing.
>
> The WCB believes that earlier access to specialists and appropriate testing can lead to earlier return to work and reduced claim duration. Therefore, the WCB has entered into two agreements/research studies to provide expedited access to orthopedic surgeons and MRI testing and to examine the impact of the expedited services on workers' recovery and return to work. Under the terms of the expedited orthopedic agreement, the wait time to see an orthopedic surgeon is reduced to 2 weeks, with the report to be provided the following week. The referral can be made by the treating physician or by a WCB physician where that is considered appropriate. This agreement came into effect in August 1999 and is ongoing.
>
> The expedited MRI agreement/research study with the QE11 Health Sciences Centre became effective April 1 2001 and is currently scheduled to run for 2 years. Under the terms of this

> agreement, the wait time to have an MRI is reduced to 3 weeks, with the report to be provided within 1 week following the testing. The referral is usually made by the treating specialist.[62]

All administrative and judicial adjudicative processes must contend with the tension between quick decision-making and circumstances that occasion or contribute to delay. Sometimes, decision-makers are required to strike a fine balance between maintaining the integrity of the process and accepting delay as a necessary part of fairness.

Some view late-submitted evidence as a “threat” or “challenge” to adhering to the statutory time limits and providing an efficient appeal system. The board of directors decided the board's internal appeals department is to err on the side of efficiency and successful achievement of its established performance standard.

WCAT is subject to the balance struck in the common law rules of fairness and natural justice. This does not mean it cannot manage its own process. It can. Its process and the time within which it makes its decisions, in effect, set the time limit on the presentation of any additional evidence. The power to refer a matter to a hearing officer allows WCAT to adhere to its statutory time limits and presents a possible deterrent to deliberate delay.

Review Topic 22

Should the requirement, under clause 246(1)(b), that WCAT decide an appeal in accordance with “any additional evidence the participants present”, be made subject to any time limits imposed by the Tribunal, pursuant to Section 240 of the act?

Response

No. There should be no statutory time limits. This is the last level at which new evidence is to be considered and the WCAT has the responsibility to manage its process, including referrals to hearing officers, in a manner that is both efficient and fair.

8.06 WCAT Power to Remit Matters or Give Directions to WCB

The Workers Compensation Appeals Tribunal may remit a matter on appeal back to the hearing officer when "the quantity of new or additional evidence or the disposition of the appeal merits the referral."[63] WCAT has made referrals in both circumstances. Any subsequent appeal receives priority to appeals commenced after the date of the referral.[64] There have been 45 referrals in the six years from 1996 to 2001.

Fig 8.13 **WCAT Referrals to Hearing Officers (1996-2001)**

1996	1997	1998	1999-00	2000-01
1	1	4	14	25

On receipt of a referral, the hearing officer may send the file to an initial board decision-maker to gather more information or give an opinion.

Any referral will implicitly include some degree of direction to the hearing officer, such as to consider new or additional evidence or to decide a specific issue. It is not clear how far WCAT can go in giving directions to the hearing officer or the board generally.

WCAT believes it should have the express authority to give directions, including a direction to undertake further investigations and development of the file.[65] At the same time, it wishes the hearing officers to have authority to go beyond the WCAT direction and to consider any further new or additional evidence. In addition, WCAT believes it should be able to make a referral back to an initial adjudicator, such as a vocational rehabilitation consultant or case manager.

All of the decision-makers at each level, from initial adjudication to the hearing officers to the appeal commissioners, are experts. The interactions among them should respect the expertise and role of each from initial investigator and adjudicator to final appeal decision-maker.

The nature of the external appeals tribunal is that, beyond published policy, it cannot be directed by the board which appears before it as a party to an appeal. WCAT reviews decisions by the board and the hearing officers in the board's appeals department. WCAT does not manage, and is not accountable for, the quality of the investigations and decisions by the board. While WCAT legally superintends, it does not operationally supervise. And it should not. To do so would compromise its independence.

The committee has heard nothing to convince us that the hearing officers require closer supervision on referrals or that they, or the initial adjudicators the hearing officers may send a referral file to, require closer supervision or direction to do their work correctly or promptly.

Review Topic 23
Should WCAT's jurisdiction, under subsection 251(1), to refer any matter connected with an appeal to the Hearing Officer who decided the matter be expanded to allow it to remit back to the board, generally, or to give directions to the board or the Hearing Officer in the context of a referral?

Response
No.

8.07 WCAT Power to Correct Errors and Reconsider Decisions

WCAT has the express power to "correct a typographical or clerical error in a decision."[66] The corrections made have been truly minor, for example, the date or number of a decision. Most, or all, corrections could have been done without express legislative authority.

Fig 8.14 **WCAT Correcting Decisions (April 2000-August 2001)**

	2000-01	**2001-2002** (to Aug.31/01)
Corrected Decisions	22	11
Regular Decisions	1,506	311
Total	1,528	322
% Corrected	1.4%	3.4%

WCAT does not have a statutory authority to reconsider its decisions.[67] It is expressly directed not to: "The Appeals Tribunal shall not (a) reconsider; (b) rescind, alter or amend; or (c) make any further or supplementary order in regard to, any decision already made by the Appeals Tribunal."[68]

WCAT contends it should be authorized, with the consent of all parties, to reconsider its own decisions to correct errors of jurisdiction and breaches of the rules of natural justice or the duty of fairness. These errors can occur because of administrative mistakes in the transmittal or handling of a file or decision-making errors by appeal commissioners.

These errors are currently reconsidered by WCAT following an appeal to the court of appeal and consent by all parties that the court of appeal order the matter remitted back to WCAT. Some consent orders have provided for a remittal back to the Workers' Compensation Board.[69] These cases are infrequent, but represent a costly and a time-consuming use of the court of appeal.

Review Topic 24
Should WCAT's power, under subsection 252(3), to correct errors be expanded? Should WCAT be extended the power to reconsider its own decisions in specified circumstances?

Response
Yes. At its discretion and with the consent of all parties, WCAT should have authority to correct errors of jurisdiction, breaches of the rules of natural justice and breaches of the duty of fairness through rescinding and reconsidering a decision.

8.08 Percentage of Board Awards Changed

The Workers' Compensation Board makes numerous decisions that can be appealed. No workers' compensation board tracks the thousands of decisions made weekly that may precipitate an appeal. They track claims and workers making claims. One worker may make more than one claim generating many decisions and leading to several appeals.

In addition to decisions on individual claims, the board makes decisions on classifying employers and setting assessment rates for each employer.

Fig 8.15 **WCB Internal Appeals Department Assessment Appeals (July 1993-December 2000)**

	1993	1994	1995	1996	1997	1998	1999	2000
Number of Appeals Outstanding from Previous Years	NA	0	8	9	10	7	7	5
Number of Appeals Received in Year	0	8	16	16	30	18	49	57
Number of Appeals Resolved in Year	0	0	15	15	33	18	51	51
Outcomes								
Withdrawn	0	0	2	1	1	1	0	1
Accepted In Part/ Entire	0	0	4	3	5	5	12	7
Denied	0	0	8	10	26	12	32	38
Overturned by Assessments	0	0	1	1	0	0	2	2
Other	0	0	0	1	1	0	5	3
Number of Appeals Pending at Year End	0	8	9	10	7	7	5	11

Fig 8.16 **WCAT Assessment Appeals (June 1996-December 2000)**

	1996	1997	1998	1999	2000
Appeals Outstanding from Previous Years	1	9	27	36	18
Appeals Received in Year	9	22	14	39	13
Appeals Resolved in Year	0	2	1	55	20
Outcomes					
Withdrawn	1	2	4	2	4
Accepted In Part/ Entire	0	1	0	29	5
Denied	0	1	1	25	15
Returned for further review	0	0	0	1	0
Appeals Pending at Year End	9	27	36	18	7
Oral Hearing Decisions Issued	0	1	0	10	11

Most appeals arise from decisions on claims for compensation. Not every appeal arises from an "award." Other possible decisions include to accept or deny a claim, to continue or terminate benefits, to award a certain benefit at a certain amount, to award or deny certain health-care costs, to offer certain vocational rehabilitation assistance but not another type of assistance and so on. Any one of many decisions during the life of a claim may be the subject of an appeal.

A hearing officer or the WCAT may deny or allow the appeal on all or some of the issues. The appeal may be withdrawn or referred back to the hearing officer or resolved by mediation.

There are no statistical standards and common outcome definitions among Canadian workers' compensation boards or appeal tribunals. Some do not segregate or report outcomes in various types of appeals, such as assessments and vocational rehabilitation.

The appeals department of the Workers' Compensation Board and WCAT track and report outcomes. They do not track impacts on initial board decisions. A decision changed at one level may be reinstated at the next. At the hearing officer level, an appeal may prompt a decision by the board to overturn the initial decision in the Client Services Department. This is not a decision at the appeal level, although a change occurs after an appeal is initiated.

There is no data tracking claims-related appeals through the entire appeal system. The backlog experiences and measures taken to eliminate backlogs distort the data for both the hearing officers and WCAT. The available appeal data is in Appendix J.

At WCAT appeals may be allowed, denied or otherwise resolved.[10] Some applications to WCAT are not appeals, but original decisions.[11] The WCAT overturn rate is similar to that of final administrative levels of appeal in other Canadian jurisdictions.[12]

Fig 8.17 **Percentage of Resolved Claims Appeals Accepted in Part/ Entire (1993-2000)**[73]

	1993	1994	1995	1996	1997	1998	1999	2000
Hearing Officers								
Resolved Claims Appeals	57	376	1,534	2,871	2,450	1,022	1,692	1,871
Accepted (Part/Entire)	24	110	409	534	593	317	381	509
% Accepted	**42.11%**	**29.26%**	**26.66%**	**18.60%**	**24.20%**	**31.02%**	**22.52%**	**27.20%**
WCAT								
Resolved Claims Appeals	–	–	–	80	506	1,149	2,303	1,742
Accepted (Part/Entire)	–	–	–	53	204	568	1,315	828
% Accepted	–	–	–	**66.25%**	**40.32%**	**49.43%**	**57.10%**	**47.53%**

Because of the volume of the backlog, it is not possible to draw any conclusion about the correlation between the acceptance percentage by the hearings officers and WCAT or what proportion relate to current claims and recent decisions.

Review Topic 26

How does the percentage of initial WCB awards changed after internal or external appeal compare to the experience of other Canadian WCB's?

Response

There is no conclusive basis on which this question can be accurately answered. The committee's sense, based on the available data on the rate of acceptance of appeals, is that the percentage is comparable or similar.

9. Accountability Frameworks

9.01 Broader, Program Perspective is Imperative

The workers' compensation and health and safety program does not have a single, integrated accountability framework or reporting structure. For example, there is not a consolidated annual report on the occupational health and safety and workers' compensation program. As a consequence, it is most difficult to determine if the program is fulfilling its mandate at all, or in an efficient and effective manner.

The four agencies of the program, Occupational Health and Safety Division, Workers' Compensation Board, Workers Advisers Program and Workers Compensation Appeals Tribunal, have distinct lines of communication and accountability frameworks. They operate largely as isolated bureaucracies, jealous of their administrative turf and only begrudgingly communicating with one another. Process, not purpose, dominates.

It is alarming that many stakeholders question the enduring merit of the program. Some have fled to private insurance.[1] Unless all of the agencies or sub-systems of the health and safety and workers' compensation program learn to act with an understanding of the impact their decisions and choices have on the overall program, there will be further erosion of stakeholder and community commitment to the program.

There is a pressing need to define common goals, to create integrated lines of accountability and communication and to set program, not just agency, measures of performance. This committee has not had the time or mandate to pursue each. However, it is a task that must be done without delay and with broader public debate. As far as our mandate and time permit, our recommendations and responses to the review topics are framed with an urgency to move toward this larger goal.

9.02 **Three Distinct Accountability Frameworks**

There is a distinct accountability framework under the *Occupational Health and Safety Act*. There is no, or very little, meaningful interaction and communication between the Occupational Health and Safety Division and the three agencies under the *Workers' Compensation Act*.

There are two distinct accountability frameworks under the *Workers' Compensation Act*. Each is rooted in a founding, or Meredith, principle of public workers' compensation

1) public, or state, administration of the workers' compensation program; and
2) exclusive, autonomous jurisdiction assigned to an administrative body to make decisions in individual cases.

The first accountability framework is focused on broad program issues, such as universal coverage, collective employer liability, industry funding, security of future benefit payment, basing benefits on wage loss and prevention of workplace injury and illness. This framework must sustain and achieve several outcomes, including program currency, relevance, efficiency, effectiveness, transparency, appropriateness, acceptability and responsiveness.

The second accountability framework is focused on the correctness, fairness and quality of individual decisions affecting individual workers, dependants and employers under the statute. Regulations and policies that define entitlements and obligations and deliver the program to all covered workers and employers also come under scrutiny. This framework consists primarily of the appeal process. It questions past practices, compels published policy and requires reasoned decisions from primary decision-makers. It invites workers, and more recently employers, to challenge everyday decision-making at the board.

Of the two frameworks, the second one, focused on individual decision-making, is more vigorous. Individual injured workers and worker groups use it each day as their primary tool to hold the board accountable and to press for policy, regulatory and legislative change.

The past failings of the appeal process have commanded and consumed extensive attention and energy in the 1990s. Injured workers associations press for more recognition and support in pursuing individual claims. The Workers Advisers Program is available to individual workers.

The first accountability framework, directing systemic, program issues, is not complete. There is no existing structure to fully facilitate a broad perspective on the future, current trends and broad program issues. The vigour of the second accountability framework has commanded, and continues to command, most of the program's attention and to drive many of its priorities.

The two accountability frameworks are deliberately structured to be distinct. Some separation is necessary and appropriate. However, there is no overall co-ordination of the components within the health and safety and workers' compensation program. There is no gathering, sharing and joint reporting of information. There is no planning from a system or program perspective. There is no measurement of actual results against developed performance standards.

The existing accountability frameworks include several accepted accountability mechanisms:

- There are biweekly, monthly, quarterly and annual briefings and reports to ministers, government and the legislative assembly.[2]
- There is the *Government Restructuring (2001) Act.*[3]
- There is reporting to stakeholders in person, print and through websites.[4]
- Policy manuals and practice directives are available to the public.[5]
- *Freedom of Information and Protection of Privacy Act* and *Human Rights Act* apply to the WCB, WAP and WCAT.[6]
- Programs for internal performance review are in place at the WCB, WAP and WCAT.[7]
- There is extensive external review of the program and individual decisions.[8]

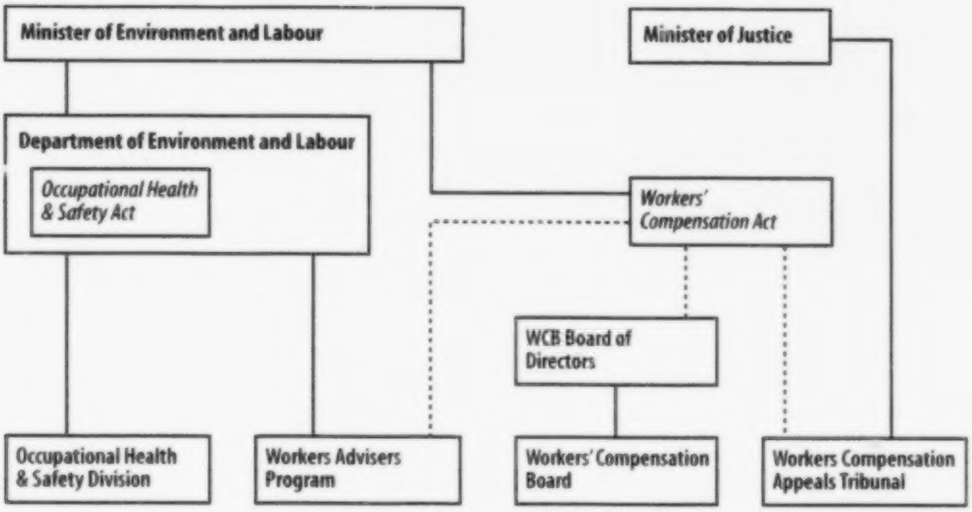
- Financial statements are externally audited.[9]
- The WCB has internal audit and program evaluation.[10]
- The chief executive officer, chief workers adviser and chief appeals commissioner and senior management are evaluated.[11]
- Precedent decisions are maintained and published.[12]
- There are orientation and training programs for new appointees.[13]
- Strategic planning is undertaken.[14]

In 1998, the Auditor General observed that the component elements of the workers' compensation program "must function together as one system to ensure that the expectations of all stakeholders are achieved to the maximum extent possible."[15] It was correctly noted that without co-ordination, "objectives and goals for each component may be inconsistent." The Auditor General said:

> Each component seems to view the others as an adversary. There is no common strategic planning, no common data bases, and appears to be limited direct contact except on some specific matters. There does exist a tri-partite committee with representation from the senior management group of each agency. However, this committee meets only as issues arise among the three groups. We recognize and support the need for each agency to maintain an arms length relationship at an operational level. Not all client data can or should be shared. This is true of the other types of data as well. However, presumably the ultimate objective of each agency is the same – provision of all benefits to which an injured worker is entitled at the earliest possible date. Respect for the important role that each agency plays in delivering this vital service, and co-operation in establishing broad strategy objectives that would be common to each group, together with sharing of appropriate information in areas of common interest, should significantly improve the working relationships among the groups, and the delivery of improved service levels to users of the system.[16]

The response of the Workers' Compensation Board was "yes", but the components are distinct and the board has the lead role and responsibility.[17] The Workers Advisers Program cautioned that, beyond quantitative measures, the impact of the program on the lives and well-being of individuals is a critical part of any assessment.[18]

Fig 9.1 **Occupational Health and Safety and Workers' Compensation Program**


Minister of Environment and Labour
Minister of Justice
Department of Environment and Labour
Occupational Health & Safety Act
Workers' Compensation Act
WCB Board of Directors
Occupational Health & Safety Division
Workers Advisers Program
Workers' Compensation Board
Workers Compensation Appeals Tribunal

Partners in the Workers' Compensation Program

• Injured workers • Medical community • Employers • Labour community • Employer associations
• Educational system • service providers • Injured Workers' Associations • Other government agencies

9.03 Autonomous Agencies – Not Co-ordinated Partners

A common characteristic and recurring outlook of the agencies that administer the occupational health and safety and workers' compensation program is that they are structured autonomously and must operate separately from each other. There is no person or body that continuously oversees and co-ordinates the direction and governance to ensure the program fulfils its objectives.

The Workers' Compensation Board's stated vision since 1994 has been a "healthy, working Nova Scotia." The board defines its responsibilities to include administration of the statute in a manner that "is supportive of the prevention of injury and disease."

While it recognizes itself as "one participant" in the program, the board defines its mission: "to co-ordinate the workers' compensation system to assist injured workers and their employers by providing timely medical and rehabilitative support to facilitate the efforts of injured workers to return to work; and by providing appropriate compensation for work-related disabilities."[19]

Despite its stated strategy "to co-ordinate all of the partners in the workers' compensation system" the board has *not* played a co-ordinating role. Nor does it embrace as its primary role, or routinely act to effect, co-ordination toward the stated goal of a healthy, working Nova Scotia.

The board, the Workers Advisers Program and the Workers Compensation Appeals Tribunal have an established tripartite committee with formal terms of reference directed to "the ongoing exchange of information and ideas and to address issues of process and practise within the Workers' Compensation System."[20] The tripartite committee membership consists of the administrative heads of the Workers Advisers Program, the Workers Compensation Appeals Tribunal, the board's internal appeals department and the board's legal representative responsible for WCAT matters. The majority of standing agenda items relate to legal questions. Its focus is not a broad program perspective.

9.04 Agency Roles, Relationships and Governance

The board of directors of the Workers' Compensation Board does not make operational decisions or decisions in individual cases. The board of directors appoints a chief executive officer who is responsible for the "day-to-day management of the business of the board."[21]

The board of directors adopts policies that must be followed in the application of the *Workers' Compensation Act* and regulations by employees of the board and the Workers Compensation Appeals Tribunal.[22] The published policy directs consistent decision-making in accordance with the statute and regulations. Policy made by the board of directors is binding on the board and WCAT if the policy itself is consistent with the act and regulations.[23]

Board employees and appeals tribunal commissioners may not refuse to apply a policy on the ground it is inconsistent with the act or regulations. A person may challenge a policy because it is inconsistent with the act or regulations in an appeal to the Nova Scotia Court of Appeal from a decision of a hearing officer in the board's internal appeals department.[24]

Public consultation is the exception rather than the rule in the development and final adoption of new policy. The board of directors only engages in full public consultation about impending policy decisions when the issue "impacts on the financial stability of the board or affects the majority of stakeholders."[25]

The board of directors does not disclose or consult when it makes recommendations for amendments to the act or regulations, even though those recommendations may have significant impact on stakeholders.[26]

There should be no issues of confidentiality in policy development and approval. Policy development benefits from broad stakeholder consultation before, not after, approval of the policy. The board of directors should consult WAP and others in the development and approval of policy.

Recommendation

The board of directors adopt a policy that requires public consultation in the policy development process by the Workers' Compensation Board prior to approval by the board of directors.

The Workers' Compensation Board, in accordance with the act, regulations and policies, pays benefits, assesses levies, collects assessments and invests funds for future payments arising from current and past claims. There are numerous responsibilities and activities involved in, and related to, each activity.

The Workers Advisers Program provides independent representation to injured workers. Its role is to advise, assist and represent injured workers and to discharge any other function prescribed by cabinet or authorized by the minister.[27] It represents injured workers appearing before hearing offices, the appeals tribunal, the Nova Scotia Court of Appeal and the Supreme Court of Canada.

The Minister of Environment and Labour has the overall supervisory responsibility for the board and the Workers Advisers Program.[28]

The Workers Compensation Appeals Tribunal is an independent administrative tribunal that decides appeals from individual claim and assessment decisions of the board. It is funded by the Accident Fund and must follow policies adopted by the board of directors of the Workers' Compensation Board. This limits its jurisdiction, but not its independence and impartiality. The Minister of Justice has the overall supervisory responsibility for the appeals tribunal.[29]

The Occupational Health and Safety Division of the Department of Environment and Labour administers the *Occupational Health and Safety Act* for each workplace or work site in Nova Scotia. There are approximately 47,276 employers and 364,500 workers covered by the act.[30] This is a broader and larger population than those covered by the *Workers' Compensation Act*.

An executive director is responsible for the day-to-day management of the business of the division.[31] The Minister of Environment and

Labour has the overall supervisory responsibility for the division.[12] The annual costs of the division are paid proportionately from the Accident Fund and from general revenue.[13]

An Occupational Health and Safety Advisory Council, whose membership includes representatives of workers and employers, provides advice to the minister.[14]

The division and board are directed to co-operate "to promote occupational health and safety and achieve their goals."[15] They have demonstrated greater co-operation in the past two years in advertising and holding joint public information sessions.

The structure and processes directing the occupational health and safety and workers' compensation program, charting its performance and reporting results to others, constitute the governance of the program. Program accountability is setting goals against which performance is assessed, actually assessing performance against the goals, and having consequences for failure. It involves knowing the program's mandate; who is accountable to whom; what information is provided to enable performance assessment; and the means to act when responsible persons fail.

Governance and accountability have immense importance for the performance of any program, the confidence stakeholders have in the organizations delivering the program and whether the program thrives and survives.

Public-sector governance has features distinct from private-sector organizational governance. One feature is the relationship the public-sector program and its component organizations have with other public institutions such as ministers, government departments, legislative officers and committees and other agencies.

Public sector governance happens in a political context oriented toward vague, undefined, but real, public interests and values and compliance with legislation. The immediate term often occupies the attention of elected decision-makers.

There is a common need in private and public-sector governance for long-term strategy and to maintain a balance between continuity –

serving the same clients with essentially the same needs – and continuous improvement.

Deciding strategy involves making choices and setting limits on what to accomplish. It cannot be constantly re-invented. Strategy informs every component of the system of the many things to be done each day to make sure they are aligned in the same direction. Strategy is distinct from operational effectiveness, which is organizational competence to do those things. To govern is to be the guardian of the strategy and to oversee the operational effectiveness of the organization.

In the 1990s, much attention has been paid to what constitutes and contributes to effective governance.[16] The contribution the governing authority makes is approving and monitoring the mission, vision, values and strategy, monitoring management control, evaluating senior management, overseeing external communications and assessing its own effectiveness.[17] Six commonly accepted and interdependent characteristics of effective governance are:[18]

- knowledge, ability and commitment to the responsibilities
- understanding the purpose of the program
- understanding the objectives and strategies of the program
- understanding what is reasonable information to govern and obtaining it
- being prepared to act (once informed) to ensure objectives are met and performance is satisfactory and
- reporting on effectiveness.

Good governance requires useful, high-quality information. Accurate and comprehensive information is necessary to make informed decisions about strategic and policy issues. Reliable information is necessary to make informed reports about the operational performance of the program and each component. For example, are workers and their dependants being treated in a fair and reasonable manner? Are workplace risks being identified, assessed and managed? Is the program providing required health care, timely service, quality adjudication and effective case management? Is it compensating workers fairly and maintaining a fair funding cost for employers?

Information is required to monitor administrative efficiency and financial performance (financial results, funding, return on investment, financial controls) and compliance with the legislation and established standards of conduct.

The information should allow the governing authority to look forward and to assess if the program has sound capacity for the short and longer term future. Are assets protected and risks managed? Are employee skills being developed? Is there a satisfactory working environment? Can major strategic initiatives be effectively implemented?

To manage and be accountable for performance there must be performance measurement. Relevant performance information has to be timely, accurate, complete, balanced and cost effective to collect. Incomplete and unreliable information causes suspicion and distrust. Fragmented, incomplete and unreliable information is a barrier to effectively governing each component and the overall occupational health and safety and workers' compensation program.

The rationale, purpose, budget and expected impact or benefit of each major initiative should be publicly reported. An evaluation should be planned with each initiative and then conducted, reported and used to improve the program's performance. The results and the evaluation of an initiative in achieving its intended outcomes should be reported.

9.05 **Legislative Assembly**

The legislative assembly has a pivotal role in this state-negotiated, publicly sponsored and legislatively sustained workplace compact. It enacts the statutory framework for the program.

Since the program's beginning the legislative assembly has frequently amended the statute and made very specific program decisions within the larger framework.[79] It has reversed Workers' Compensation Board decisions in specific cases when the board denied compensation benefits.[40] It enacted and amended a "benefit of the doubt" provision directing the board how to weigh evidence and decide entitlement.[41] It initially limited and identified each compensable occupational disease and then opened the definition of occupational disease for the board to decide.[42] It enacted an automatic legislative assumption for one group of workers in one industry with one disability.[43]

In the 1970s, the legislative assembly began to use select committees of the assembly to review the statute, regulations and their administration.[44] Some of the resulting amendments delve into very specific issues, individual rights and administrative issues. The most current and comprehensive are the 1999 amendments dealing with an appeal backlog and chronic pain.[45] Some workers had entitlements established. Others had them taken away. The Workers' Compensation Board and others were left to explain why some worker interests were addressed while others were ignored and why some promises were kept and others were not. There is a legacy of hurt and anger that was voiced in this committee's public meetings.[46]

9.06 Executive Government

By deliberate legislative choice, the workers' compensation program is not administered as a department of government. The executive government is not involved in individual decision-making. It appoints the members of the board of directors of the Workers' Compensation Board, the chief workers adviser and the members of the Workers Compensation Appeals Tribunal who make program policy decisions and decisions in individual cases.[47]

Through regulations, the government can, and has, made specific decisions affecting groups of workers or employers. For example, it includes or excludes workers and employers from coverage.[48] It sets eligibility criteria for supplementary benefits.[49]

Government can exercise control and influence over the program by enacting and proposing amendments[50] to the statute and regulations, by making appointments and by receiving quarterly[51] and annual reports.[52]

The government can request the Auditor General to review all, or certain aspects, of the operation of the Workers' Compensation Board.[53] It can engage management consultants, or others, to review and report. Since the 1960s, the government has not appointed a royal commission and has preferred to have Auditor General and management-consultant reviews.[54]

The Nova Scotia Workers' Compensation Board has always had to work to maintain the independence of its operations and decision-making from government. It has succeeded more in the 1990s than past decades. This does not mean there is any less need for everyone to be vigilant and protective of the board's independence. There may be a greater need.

Recently, the executive government was given a more direct role in the oversight of the program. Under the *Government Restructuring (2001) Act*, the Workers' Compensation Board is designated a "government agency." The executive government, through the Treasury and Policy Board, has assumed greater control over operational and organizational decision-making by the board, including final approval of its annual budget.[55] There was a corresponding reduction in the autonomy, independence and authority of the board of directors of the board. From a systems perspective, however, it brought the board under the same controls WAP and WCAT have always experienced.

9.07 Minister of Environment and Labour

The Minister of Environment and Labour has ministerial responsibility for the *Workers' Compensation Act*[56] and for the supervision, direction and control of all matters relating to occupational health and safety.[57] The Workers Advisers Program is part of the Department of the Environment and Labour for which the minister is responsible.[58] Cabinet appoints the chief workers adviser on the recommendation of the minister.[59]

Ministerial responsibility includes ultimate accountability. When issues arise, the minister is accountable. The minister has a legitimate interest in having those appointed by government exhibit competence and perform as promised. If they do not, the minister must be accountable for their selection and has a duty to act."[60]

Executive government and the responsible minister are to leave the day-to-day administration of the Workers' Compensation Board to the board of directors and the chief executive officer and of the Workers Compensation Appeals Tribunal to the chief appeal commissioner. The government and ministers are to be responsible for legislation and regulation, not policy and operations. This is a very important distinction to be respected in the adjudication of individual claims and issues involving individual employers when the board and the appeals tribunal serve as a substitute for the courts and are tribunals for administrative justice.

The point of interaction between the board and the government is the relationship between the responsible minister and the board chair. Their line of communications is central to the confidence the minister has that the government will not be surprised by a politically embarrassing event or decision at the board. The chair must be able to resist any undue ministerial intervention in board policy and operations. Often subtly, the mutual confidence between the board and government will change with changes in minister or chair.

The minister must be supportive and take an interest in the social purpose of occupational health and safety and workers' compensation and pay attention to the activities of the board and Workers Advisers Program. The minister will help, but not interfere with, the board of directors in setting priorities.

Under the *Government Restructuring (2001) Act*, there is now a direct point of contact between executive government and the board. It is too early to assess whether this change will enhance or diminish transparency and accountability in board organizational and operational decision-making and management.

The open question is whether the executive government will give the broad direction or review and manage operational decision-making to the same or a greater degree than the board of directors. The greater the control exercised by executive government, the greater the accountability for its directing or disapproval of proposed board decisions. The board of directors is not accountable for decisions directed by executive government, whose decisions cannot remain anonymous. Stakeholders funding and served by the workers' compensation program expect the board of directors to report the decisions of executive government under the *Government Restructuring (2001) Act* that impact the board.

The chief executive officer reports to the board of directors "through the Chair."[61] The CEO does not report to the minister or executive government.

The cabinet can "make any regulation that may be made by the board."[62]

Review Topic 2
Given the particular role of the Minister of Environment and Labour in relation to the WCB and WAP considering issues of both accountability and agency independence, what actions are appropriate if the Minister has concerns about agency policy, operational decisions or administration in the context of each of these agencies?

Response
It is appropriate for the minister to take steps consistent with ministerial accountability. These include proposing regulations; directing agency policy; expressing concerns strongly to the board of directors and the chief workers adviser, as was done in 1995 with respect to the need for a chronic pain policy;[63] requesting a complete report and Auditor General audit, if necessary; and regularly evaluating the performance of the appointees.

9.08 Workers Advisers Program (WAP)

The Workers Advisers Program helps to maintain the balance between autonomy and accountability in the relationship between the board and the minister and government. Referral of workers to WAP keeps the minister's office and the offices of other executive council members and elected members of the legislative assembly from engaging in debate and disputes with the board about the decisions it makes in individual cases.

WAP provides a valuable governance service by being available to assist workers. It attends to workers' needs and does not refer them to the minister or their local member of the legislative assembly.

WAP has a unique window into the overall operations of the workers' compensation program. It may see recurring and repetitive complaints and failings by the board and WCAT. It may differ with the board's interpretation or application of the statute, regulations and policies. It can provide an important accountability service by informing the board what it hears daily about board decision-making and service. To achieve this, the board must be open and accessible to WAP so the chief workers adviser can address concerns directly to the board. This does not happen.

Complaints that come to WAP may involve board decisions, which can be appealed, or concern issues of communication between the worker and the board, service failings or administrative matters. WAP can only act on the first. No person is to be provided advice or representation in connection with a claim until the claim has been denied.[64] Under the former Workers Counsellor Program assistance could be provided to the worker from the date of injury.[65]

Cabinet has the authority to make regulations concerning WAP.[66] It has defined criteria for eligibility for assistance, advice and representation under the program. Except for exceptional circumstances determined by the chief workers adviser, assistance, advice and representation may only be provided where there is a "reasonable expectation" of success and recovery of at least $500. In certain circumstances workers may be refused assistance, advice and representation because of their conduct.[67]

WAP will deny requests for service that are unreasonable, unethical, unachievable or illegal. At the request of a client, the chief workers adviser may approve obtaining a second opinion.[68] The Workers' Compensation Board, and sometimes an employer, will initiate appeals to the court of appeal. In these cases WAP appears to respond on behalf of the worker.[69]

Part of the assistance and representation provided to workers is seeking further medical diagnosis and opinions to submit to the board, hearing officers and WCAT.[70] Each usually costs more than the minimum $500 amount to be recovered under the eligibility regulations. In 2000, WAP paid $193,683.75 for medical opinions.

The day-to-day management of WAP is the responsibility of the chief workers adviser, who is appointed by the Minister of Environment and Labour. The chief workers adviser is responsible to administer the budget and work of the program, including to hire and supervise advisers and other employees and to develop and implement policies for the administration of the program and the allocation of its resources.[71] The chief workers adviser must be a member of the Nova Scotia Barristers' Society.[72]

WAP has its head office in Halifax and an office in Sydney. It employs 19 persons – a chief workers adviser; 11 advisers (8 of whom are lawyers); and 7 supervisory and support staff. Cabinet can regulate the matters that may be assigned to advisers who are not lawyers.[73]

The chief workers adviser makes a monthly written report to the minister, which contains a financial report and a statistical summary of activity. The activity summary reports all requests for service, including requests when the worker's claim had not been denied and service could not be provided; the number of files opened, closed and pending; the total number of clients served to date in the year (April to March); the number of new appeals filed; and the number of submissions made and hearings attended (hearing officer, WCAT and court).

The service provided by the Workers Advisers Program differs from its Canadian counterparts, which generally have fewer lawyers and a broader scope of service. There is no reliable data on delays in accessing the service from week to week or month to month or year to year.

Fig 9.2 **Clients Served and WAP Activities (1999-2001 – Fiscal Year End March 31)**

	1999–2000	2000–2001
Requests for Service	1,145	1,249
Clients Served	3,426	2,755
Files Opened	1,268	984
Files Closed	1,881	1,656
Submissions to:		
Hearing Officer	242	188
WCAT	1,545	882
Court	26	21
ADR	267	
Total	2,080	1,091
Hearings /Appearances at		
Hearing Officer	142	188
WCAT	221	197
Court	26	18
Total	389	403
New Applications to Court of Appeal	23	69
Appeals to Supreme Court of Canada	0	2

To monitor whether the number of appeals warrants establishing another office,[74] the monthly reports identify the number of appeals by county. The reports do not identify the length of time it takes a worker to speak to, or meet with, an adviser. The reports do not identify the reasons files are closed. WAP intends to capture and report this information in 2002.[75]

WAP seeks to provide early assistance to workers by helping them complete Notices of Appeal to a hearing officer. Because the Workers' Compensation Board adheres strictly to the 30-day period to give notice of appeal to a hearing officer and the hearing officers adhere strictly to the 30-day time to make a decision, many workers are unable to meet with an adviser before the date by which notice of appeal must be filed. This generates a number of formalistic appeals.

The board says it is the responsibility of WAP to manage its operations so it can give timely service. WAP says the board should be less stringent in adhering to the time limits. Often notice is given simply to preserve the worker's right of appeal pending an opportunity to see a specialist or reach the head of the waiting list for diagnostic services, such as a several months wait for Magnetic Resonance Imaging (MRI).

The cost of WAP is paid out of the Accident Fund.[76] The chief workers adviser must submit an annual report on the finances and operation of the program to the minister.[77] The most recent annual report does not give any financial details. It simply reports the total expenditure.[78] Since 1996-97, the cost has decreased from $1.9 million to $1.6 million.[79]

Cabinet approves the annual budget of WAP.[80] Its budget is also part of the budget of the Department of Environment and Labour that is reviewed and approved by the legislative assembly.

WAP reported in its last annual report that the workers "requesting service at March 2001 saw a four week waiting period to see an Adviser in Halifax and one week in Sydney. The waiting period varied through the year as demands required."[81]

WAP does not track how often its opinion that there is a reasonable expectation of success in a matter is confirmed by the outcome. It errs in providing, rather than refusing, service. It has no data on how many workers who were refused service successfully proceeded on their own, with representation by a private lawyer or with the assistance of an injured workers association.

Review Topic 19
How does the level of service provided by the WAP compare to that of its Canadian counterparts, and is it appropriate?

Response
The data is not available from the Workers Advisers Program or its Canadian counterparts on which a reliable comparison can be made. The WAP does not have comprehensive data on its current level of service from which a determination of the appropriateness of its service level can be made.

The chief workers adviser addresses quality issues through performance reviews of individual advisers.[82] The Minister of Environment and Labour is responsible for the performance appraisal of the chief workers adviser, although this function may be delegated to the deputy minister. A performance appraisal has been done less regularly than the appraisals of the other agencies.[83]

Having the chief workers adviser report directly to the minister, while operating within, and dependent upon, the organization of the Department of Environment and Labour, does not enhance organizational or operational effectiveness. It accords recognition and status to WAP and the chief workers adviser, but does not increase organizational efficiency and effectiveness. It organizationally isolates the chief workers adviser within the department.

Recommendation
Amend the structure so the chief workers adviser reports to the deputy minister.

WAP does not have an independent statutory right of access to board files on individual claims. It must receive a release from each worker, which the board then confirms was actually given by the worker. This is a precautionary process that is generally advisable, but an unnecessary administrative burden in the context of the work of WAP. Once the board converts to electronic files, WAP should have electronic access to files through computers in its offices so the board does not have to maintain or produce paper files for WAP and WCAT.

Recommendation

Amend the statute to give the Workers Advisers Program a right of access to the board file of any worker it confirms it is representing.

The board does not consult WAP before adopting policies or changes in practice or service delivery. No consideration is given to the impact board changes may have on WAP. The board of directors does not have the benefit of WAP experience in evaluating proposed policies.

Board performance can impact the workload of WAP. For example, if the board prematurely determines a worker suffers from chronic pain and refers the worker to the Functional Restoration Program, this will initiate a contact with WAP and an appeal pending further medical diagnosis to seek objective evidence of a cause for persistent pain. If files are not well developed by the board, the burden to do so can fall to WAP. If appeal decisions favourable for workers are not implemented in a timely manner there is an increased burden on WAP.

The chief workers adviser has limited contact with employers and almost no contact with the board of directors of the Workers' Compensation Board.

The work of WAP and its relationship with the workers it represents is adversely impacted by board delays in implementing successful appeals. The board does not maintain any data on how long it takes for it to implement appeals. These files seem to return to the board's population of active files and do not receive any special attention.

The perception communicated in submissions to the committee is that the board quickly implements appeal decisions that direct reduction or termination of benefits, but not those that direct commencement, increase or reinstatement of benefits. Delay in acting on any appeal decision reinforces the worker's distrust of the board and further damages the worker's relationship with the board and the workers adviser.

Recommendation

The board should set performance standards for timely implementation of appeal decisions and monitor and report its performance against the standards.

Case currency and the availability of timely advice and advocacy by WAP enhances board accountability. Demand for the services of WAP can be one indicator of workers' assessment of the board's performance. The performance of WAP reflects on the public perception of the performance of the workers' compensation program and the board. Performance failure at WAP erodes fairness and public confidence in the program. It is the minister's responsibility to ensure this does not happen.

Because of its structure and eligibility criteria, WAP is more properly characterized as a legal aid, than an assistance, program. Submissions to the committee were critical of the limited access to WAP advisers, their lack of expertise and preparation for hearings and the fact that they sometimes travel or fraternize with board employees. Injured workers want independent advocates, who are seen to be loyal to them. Many lament the loss of the right to have independent legal representation in their community from the date of injury. They know there has been a loss of private sector legal expertise in workers' compensation issues.

In 1998 the select committee heard similar complaints about service quality, lack of expertise and preparation and that workers having to travel to Halifax or Sydney at their expense and discomfort to see an adviser in a timely manner.[84] The select committee said that WAP must do better. The select committee recommended workers have an option to retain local legal representation through legal aid or privately and receive funding limited to $1,200 per claim. The select committee "strongly recommends the realignment of the WAP within the Nova Scotia Legal Aid system."[85] These recommendations were part of Bill 90 on first reading, but were removed before final reading.[86]

The Minister of Environment and Labour, on such conditions the minister deems appropriate or cabinet prescribes, may designate trade unions, associations of trade unions and other worker associations to provide advice, assistance and representation to workers as part of WAP under the supervision and direction of the chief workers adviser.[87] The cabinet may make regulations prescribing the terms and conditions for this funding.[88] No regulations have been made. No terms and conditions have been prescribed. No trade union or association has been designated since this ministerial authority was enacted in 1996.

Few Nova Scotia trade unions have dedicated resources to assisting members with workers' compensation claims and appeals. They refer their members to WAP. No trade union or association of trade unions submitted they should be designated and funded.

The Workers' Compensation Board received a request from an injured workers association to examine the feasibility of a program to train members of injured worker associations or groups to represent other injured workers. The board provided funding for a consultant to research the question.[89] An advisory steering committee was struck including the chief workers adviser, a representative of WCAT, two employer representatives and two members of the Cape Breton Injured Workers Association.[90]

The final report concluded there was insufficient support for the development and implementation of a new training program for members of injured worker associations, but there is some support to make existing training programs provided to board, WAP and WCAT staff available to members of injured workers associations.[91]

Review Topic 18

In the event of workers adviser appointments under Section 272 of the act, is there an adequate means to address issues of service quality control, accountability and professional regulation and discipline? What is the desirability and feasibility of a system to train, certify and regulate individuals (such as members of injured workers groups) to represent other injured workers in proceedings under the act?

Response

There are no adequate means to address issues of service quality control, accountability and professional regulation and discipline. It is not desirable, at this time, to have a system to train, certify and regulate individuals (such as members of injured workers groups) to represent other injured workers in proceedings under the act.

9.09 Funding Injured Worker Associations

Injured workers and surviving spouses have joined together in associations of injured workers to provide mutual support, assistance, advice and some representation on appeals. These volunteer associations provide a valuable service to injured workers and make a positive contribution to the workers' compensation program.

The injured workers associations advocate for agency performance and change. They were among the most active presenters to this committee. They serve a valuable role in assisting, advising and educating injured workers and their families. They do not restrict themselves to issues of law, but provide volunteer community support and advocacy at every level. They are street-wise in areas and ways of injured worker need that WAP does not address.

The injured workers associations will be an active participant in the workers' compensation program for the foreseeable future.

The 1998 select committee heard from four regional associations of injured workers. This committee heard from five associations, with varying degrees of formal structure and established accountability mechanisms.[illegible] Most of them have come into existence since 1996. Generally, the groups unite around or follow one or two persons. The animosity and rivalry among certain of the group leaders is loud and unmistakable.

The active and motivating leadership of each association is injured workers or spouses of injured workers. They have varying degrees of expertise, organization and resources. None has a reliable source of income. They undertake various fund-raising activities. Some receive financial or other assistance from trade unions. Each provides emotional and other support and assistance to injured workers and their families that is beyond the mandate of WAP. Some do undertake appeals and representation.

The select committee, like this committee, was told that WAP was not performing well and the associations obtained benefits for workers in instances when the worker had been told by a workers adviser that the worker was not entitled to benefits. Those who presented to this committee bristled at the suggestion their work would be subject to any supervision or direction by the chief workers adviser. The select committee urged the government to "provide established injured workers' organizations with a grant to operate."[13] It did not say what it meant by "established" or suggest a grant amount.

The cabinet has the authority to make regulations dealing with any matter necessary for the achievement of advice, assistance and education of injured workers.[14]

The committee has concluded that the contribution established injured workers associations make to the program should be recognized and financially supported with funds from the Workers Advisers Program. While the associations may continue to represent workers who are not represented by WAP, the funding is intended for areas other than legal representation.

Review Topic 17

Is it appropriate that advocacy associations of injured workers are supported only by their private resources? If not, for what particular purpose would new funding be suggested, from what sources and subject to what criteria?

Response

Advocacy associations should have the opportunity to obtain funding in the form of grants to assist in the pursuit of their advice, assistance and education, but not representation, endeavours on behalf of injured workers. The funding should come from the Workers Advisers Program under regulations adopted by cabinet and administered by the chief workers adviser. The grant criteria in the regulations should include, but not be restricted to, the following:

- The association is a legal entity with a membership and structure whose sole purpose is to serve injured workers.
- The association's services include a defined service beyond the service provided by WAP.
- The association has an established record of service, financial accountability and reporting to members.

9.10 Workers Compensation Appeals Tribunal (WCAT)

The Nova Scotia Workers Compensation Appeals Tribunal was established May 23, 1995.[95] WCAT is an administrative tribunal operating within the workers' compensation program, but independent from the Workers' Compensation Board. It hears appeals from final decisions of the board.[96] In addition to being a final decision-maker higher in the hierarchy of decision-makers,[97] WCAT may resolve "important or novel questions or issues of general significance" on referral from the board chair.[98]

WCAT is funded by the Accident Fund and must apply policies adopted by the board of directors of the Workers' Compensation Board, unless they are inconsistent with Part I of the act or regulations.[99] Since October 15, 1999, the Minister of Justice is responsible for the supervision and management of WCAT.[100]

The cabinet appoints the chief and other appeal commissioners for fixed terms.[101] All appointments are subject to competition and follow the public service guidelines for recruitment. The chief appeal commissioner, who is the chief executive officer, must be a member of the Nova Scotia Barristers Society.[102] WCAT hears appeals from decisions of hearing officers.[103] Oral evidence is recorded[104] and decisions must be written "as briefly as possible without undue elaboration."[105]

To minimize surprises to the board, like the March 23, 1990 Hayden decision of the court of appeal, WCAT must notify the board when each appeal is filed and "provide the board with a list of the issues raised by the appeal."[106] The board is a participant in the appeal.[107]

WCAT determines its own procedures and rules governing appeals.[108] It may make general regulations to carry out its duties.[109] It is in the process of developing practice directives.[110]

An Alternative Dispute Resolution (ADR) process was initiated in May 1997 for older appeals from the backlog "which had arisen primarily from the time required to move the system from the Appeal Board,[111] under the old act to the Workers Compensation Appeals Tribunal under the new act." [112] Phase I of the ADR project was completed in 1998.[113] Employers could not participate. Participation was restricted to the injured worker and representative, board representative and appeal commissioner.

In March 1999 the employer was given permission to participate in ADRs. This is referred to as Phase II of the project. Regulations formally establishing an ADR procedure were adopted in December 1998.[114] All appeals initiated prior to April 1999 were eligible for Phase II of the ADR project. This phase ended January 31, 2000.[115] A Phase III has not begun because the Workers' Compensation Board refuses to participate.

> On February 3, 2000, the WCB informed the ADR process committee that it had decided not to proceed or participate in a further phase of ADR at WCAT. At present, it is not anticipated there will be a further phase of ADR at WCAT. It is possible that if circumstances change in the future, that new discussions may be initiated on the possibility of introducing a further ADR Program at WCAT.[116]

WCAT has written criteria for decision quality and length.[117] It has written performance targets and measures for its appeal commissioners and team leader appeal commissioners.[118]

WCAT has an active management committee that meets regularly and records minutes, which identify decisions reached and actions to be taken. It tracks and reports internally on active court of appeal matters, its appeal statistics[119] and appeals assigned to individual appeal commissioners. There is a formal appraisal process for the chief appeal commissioner with the Minister of Justice. There is a Performance Plan that sets goals and objectives for the next year. The chief appeal commissioner makes monthly written reports to the minister and meets quarterly with the minister.[120] An annual report is made public each year.[121]

9.11 Nova Scotia Court of Appeal

WCAT decisions may be appealed to the court of appeal, with leave of the court, on questions of jurisdiction or law, but not fact.[122]

Both the board and appeals tribunal may state a case on a question of law to the court of appeal.[123] Only the board has stated one case.[124]

As of October 2001, there were 230 appeals pending before the court of appeal but only 15 active appeals. Of those 230 appeals, 169 are awaiting a Supreme Court of Canada decision on chronic pain. Forty-six are awaiting a decision on the *Government Employees Compensation Act*.[125]

9.12 Ombudsman

The *Ombudsman Act* authorizes the ombudsman to investigate complaints about the Workers' Compensation Board.[126] The office assesses complaints, sometimes informally resolving them before proceeding to formal investigation. When there are allegations of administrative error that warrant investigation, the office undertakes an investigation. Some result in a report being issued. Some are resolved and some result in a letter explaining why the complaint was not found to have merit.

In 2000, the office made 44 assessments and one formal investigation, which was resolved. Of the 44 assessments, 37 were declined because the complainant had an avenue of appeal; one was resolved; four were discontinued; and two were found to have been without merit.[127]

9.13 **Strategic Planning and Performance Measures**

A strategic plan is a commitment to undertake one set of actions rather than another to produce successful organizational performance. A strategic plan directs performance. It does not ensure successful performance, but in most organizations, a strategic plan is necessary to achieve successful performance. The creation, implementation and monitoring of a strategic plan is a key means by which management and supervising bodies direct the organization and fulfil part of their governance role.

Strategic management involves

- having a vision where the organization needs to be headed
- establishing a mission
- converting the mission into specific performance objectives
- crafting a strategy to achieve the targeted performance
- implementing and executing the strategy efficiently and effectively
- evaluating performance, reviewing and initiating any corrective adjustments.

The first four set a direction for an organization. The last two are action-driven administrative tasks. They depend on the organization being capable to successfully carry out the strategy; budgeting that puts resources into critical activities; motivating employees to energetically pursue strategic objectives; and knowing and rewarding achievement of targeted results.

Each component of the health and safety and workers' compensation program may have a strategic plan, but there is none for the entire program. In 1998, the Auditor General recommended that there should be a "single, coordinated strategic plan that establishes broad objectives" for the entire workers' compensation system approved by the minister.[128] The committee believes it must be broader.

Recommendation
The minister should ensure there is a single, coordinated strategic plan that establishes broad objectives for the entire health and safety and workers' compensation program within one year.

For any statutory program, compliance with the act, regulations and policy is a key performance expectation. The roles of WAP and WCAT are to ensure compliance with the act, regulations and policies. They each should monitor and report on their respective compliance with the act and regulations. WAP does quality assurance reviews of files.[129] WCAT does have a specific process to review and ensure compliance.[130] The board performs quality assurance audits, utilizes its internal appeals department and its board of directors monitors to ensure compliance. In 1998, the Auditor General recommended that each agency publicly report the results of their monitoring for compliance.[131] None does.

Compliance with the governing statute is the first measure of performance. Self-evaluation and self-reporting is crucial to accountability and performance improvement.

Recommendation
By legislation or regulation require each agency in the health and safety and workers' compensation program to publicly report the results of their monitoring for compliance each year.

Setting performance expectations and measuring actual performance against expectations was a focus of the 1998 Auditor General report.[132]

The Auditor General has informed this committee that the Workers' Compensation Board is in the forefront of provincial government agencies in setting, measuring and reporting on performance.[133] He also suggested that the buy-in of stakeholders on these measures is "essential" to ensure an organization is monitoring what is important.

The board began performance measurement in 1998 after identifying what could, and should, be measured. The measurements are intended to be balanced (service, stakeholder satisfaction, financial and internal/employee), organization-wide, measurable and meaningful.

Fig 9.3 **WCB Corporate Performance Measures**

Measure	Target
Satisfaction with the Politeness of Staff	A satisfaction rating of 4.5 out of 5
Timeliness of first payment	50% paid within 15 days
Timeliness of appeal decisions	95% within 90 days
Percentage Funded	Total assets divided by total liabilities
Administrative Costs	Total admin costs divided by total assessments
Satisfaction with Clarity of Letters	A satisfaction rating of 4.5 out of 5
Satisfaction with Accessibility of Staff	A satisfaction rating of 4.5 out of 5
Satisfaction with Clarity of Forms	A satisfaction rating of 4.5 out of 5
Satisfaction with Frequency of Contact	A satisfaction rating of 4.5 out of 5

In 2000 the board convened an advisory committee, which included persons from outside the board, two of whom are members of this committee.[114]

> The committee's mandate was to focus on reviewing the WCB's performance measurement and reporting system. During the process of reviewing this, the committee discussed a range of issues within the workers' compensation system. The committee identified the need to review the effectiveness of the system beyond the scope of the WCB. Ideally, the workers' compensation system would have a series of performance measures that would allow stakeholders to determine the effectiveness of the entire system. Establishing system measures would require a single governance structure. Given that this system does not exist, the committee focused its efforts on reviewing the WCB's system of measurement.[115]

Two of the board's corporate performance measures, percentage funded and administrative costs, report data, but do not measure performance against a clear annual target. Five of the measures relate to "satisfaction" and depend on surveys. There is widespread belief that surveyed workers "do not bite the hand that feeds them" and are not candid in responding to surveys, regardless whether they are conducted by marketing consultants or the board. Two of the measures, timeliness of first payment and hearing officer decisions, use objective data to measure performance against verifiable targets. None measures compliance with the statute or outcomes.

The board should expand the number of objectively verifiable measures and decrease the number of survey based measures. Once the letters and forms have been made clear, it should not be necessary to regularly measure perceptions about their clarity. Standards for frequency of contact, accessibility and politeness can be established and internally monitored, rather than surveyed externally.

WCAT tracks its performance in decision timeliness, consistency with statute and policy and cost effectiveness.[19] WAP does not have formal performance measures that it tracks.

Organizational and economic efficiency are commonly touted as measures of performance of workers' compensation programs. This often translates into cost control or claims management. The focus is often to reduce claims costs through decreased duration of claims and decreased propensity of temporary benefits to become extended benefits. Doing this while maintaining confidence that claims are being dealt with fairly is the true challenge. Managing the phases of a claim to optimize medical treatment, vocational rehabilitation assistance and achieve return to work at the earliest time possible requires a consistent choreography of many people and systems.

Stakeholders expect prompt, accurate and compassionate responses to claims. They expect like case to be treated alike. They expect timely responses to changes in work and workplaces. They expect avenues to participate in policy development and program evaluation. They expect financial stability and security of future payments from current assessments.

Review Topic 25

What performance measures would be most appropriate to determine how well the three agencies which make up the workers' compensation system are meeting their statutory mandates, within the framework of the act as a whole?

Response

The most appropriate performance measures are ones that measure and report

- compliance with the statute
- address access to, and identify barriers to, service
- service delivery (timeliness, competence, courtesy and comfort, fair treatment and outcomes)
- an integrated, systemic approach to the delivery of the program
- a balance of financial and other measures.

9.14 Administrative Costs

Throughout the 1990s, the total cost for administration of the health and safety and workers' compensation program has increased. The administration costs for each agency within the program, except the Workers Advisers Program, have increased. By legislation, some costs formerly paid with money from provincial general revenue have been transferred to the Accident Fund.

In 1993 an external review of the Workers' Compensation Board concluded the board had followed a "penny wise-pound foolish" approach of inadequate resources, minimal staffing, inadequate information systems and too little attention to policy development. The result was an absence of claims management and increased claims duration and benefit costs.[117]

What costs are to be counted as part of the administration costs of an agency can be an issue of contention. The general principle is that they include all expenses related to management and administration of the agency. In the board's case neither the levies the board collects to pay to safety associations nor the money the Accident Fund pays to support the Occupational Health and Safety Division are included as part of its administration costs. Benefit costs are not included, but the cost of medical opinions paid by the Workers Advisers Program is included. Costs recovered from self-insured employers are not included and the claims costs recovered from these employers are not included in the total claims costs for the year for the board. Investment-related costs are not included. They are deducted from investment returns. Allowances for doubtful accounts and bad debts are not included.

The key statistical measure for administration costs used by the Association of Workers' Compensation Boards of Canada is administration costs per $100 of assessable payroll.[159] It also reports the portion of the average assessment rate attributed to program administration by all involved agencies in the jurisdiction.[160] Another possible measure is administration cost per time loss claim.

Fig 9.4 **Interjurisdictional Comparison of Administration Cost per $100 of Assessable Payroll (1996-1999)**

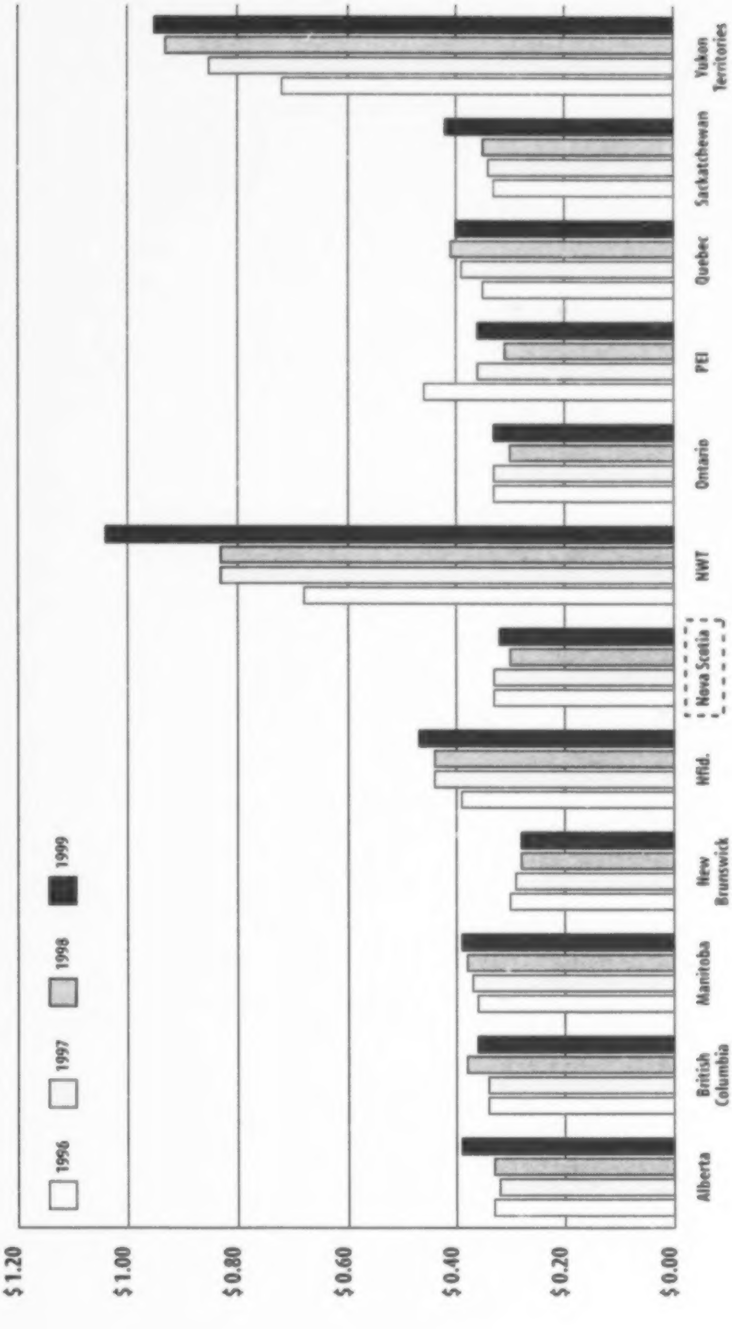
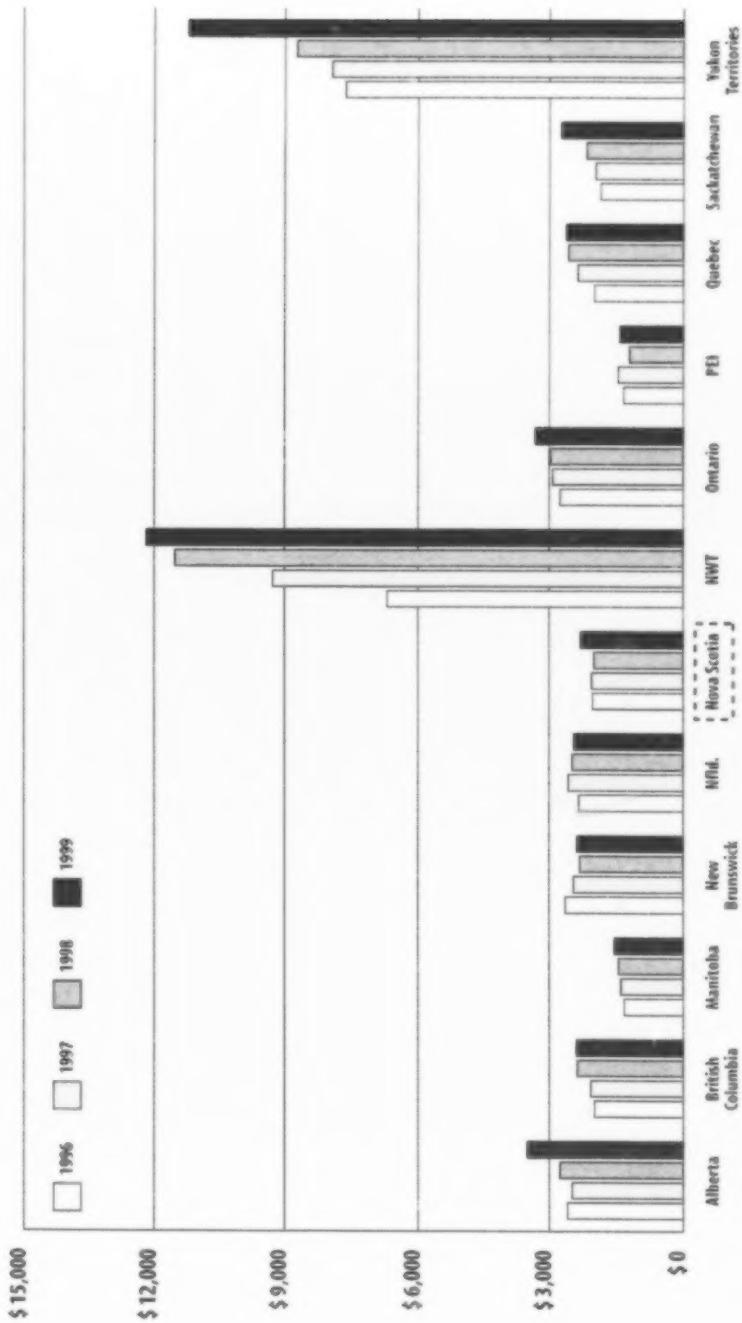


Fig 9.5 **Interjurisdictional Comparison of Administration Cost per Time Loss Claim (1996-1999)**



The board's administrative costs as a percentage of claims costs incurred for the past 10 years has been steadily increasing. Nova Scotia, however, has had the lowest percentage of claims costs incurred spent on administration costs from 1996 to 2000.

Fig 9.6 **WCB Administration Costs as Percentage of Incurred Claims Costs (1991-2000)**

	Administrative Costs	Claims Costs Incurred	As a % Claims Costs Incurred
1991	$7,755,357	115,799,524	**6.70%**
1992	$9,493,736	116,793,301	**8.13%**
1993	$11,558,364	116,925,222	**9.89%**
1994	$14,969,759	106,505,843	**14.06%**
1995	$16,081,494	103,796,429	**15.49%**
1996	$16,208,394	99,167,002	**16.34%**
1997	$16,787,195	98,227,173	**17.09%**
1998	$16,347,288	96,103,213	**17.01%**
1999	$18,824,187	98,318,376	**19.15%**
2000	$21,280,047	106,137,738	**20.05%**

Fig 9.7 **Interjurisdictional Comparison of Administration Costs As a % of Claims Costs Incurred (1996-1999)**

	1996	1997	1998	1999	2000
Alberta	29.58	27.48	29.94	32.49	26.41
British Columbia	19.28	19.26	20.28	19.39	19.28
Manitoba	21.92	18.35	22.92	27.49	32.25
New Brunswick	26.03	25.17	19.77	19.94	17.88
Newfoundland	21.70	22.82	20.33	16.51	15.30
NWT & Nunavut	35.39	56.77	63.92	76.54	66.19
Nova Scotia	**16.34**	**17.09**	**17.01**	**19.15**	**20.05**
Ontario	27.07	30.19	30.94	35.91	43.37
PEI	69.16	90.62	25.10	29.56	95.71
Quebec	23.55	26.29	27.68	27.80	28.90
Saskatchewan	30.34	29.04	29.54	35.82	29.55
Yukon	38.96	50.42	53.07	42.71	38.61
Canada	24.33	25.61	26.54	28.10	29.42

It should also be noted that the benefits costs incurred for the Quebec board does not include self insurers.

Fig 9.8 **Cost Ratios of Three Agencies (1999)**

Jurisdiction	No. of Claims	% WCB admin. cost/ benefits cost incurred	% internal appeal cost/benefit cost incurred	% external appeal cost/benefit cost incurred	% workers advisers or advocates cost/benefits cost incurred
Nova Scotia	**35,010**	**11.7**	**0.4**	**1.1***	**1.1**
Saskatchewan	35,978	25.5	0.6	N/A	0.3
New Brunswick	27,714	14.0			0.3
Newfoundland	15,252	12.2	0.2	0.5	0.2
Manitoba	45,652	21.6			0.4
Alberta	124,464	15.7	0.3	0.6	0.2
British Columbia	178,187	13.3	0.3	0.7	
Ontario	364,069	14.3	0.4	0.7	0.4
PEI	5,796	14.7	0.3	0.1	0.5
Quebec	160,340	23.6	0.7	3.4	
Yukon	1,107	34.2			
NWT/Nunavut	2,573	67.0			

**WCAT post-backlog rate is 0.7%, comparable to British Columbia and Ontario.*

Review Topic 28

Does the ratio of administrative cost of the WCB, WCAT and WAP to the value of claims paid compare favourably to each agency's Canadian counterpart?

Response

The board's ratio compares favourably. WAP and WCAT ratios do not.

9.15 Regular, Scheduled, Comprehensive, Stakeholder Reviews

There is value in regular, scheduled, comprehensive reviews of the health and safety and workers' compensation program by a committee of representatives of workers and employers who are committed to the program, but not employed within the program.

In 1937, a royal commission recommended Nova Scotia follow the policy in Manitoba of appointing a committee every five years to investigate "the whole working of the act" and make recommendations for amendments and improvements.[14] Other provinces have a regular review by an independent committee, which reports with recommendations for improvement on all aspects of the statute and regulations and their administration.

Recommendation

Amend the act to provide for the appointment every four years of a committee representative of workers and employers to review and report on the statute and regulations and their administration.

9.16 A Need for an Integrated Approach

The disjointed nature of the existing health and safety and workers' compensation accountability framework with service vacuums being filled by volunteers and agency rivalry impeding communication, co-operation and improvement is not appropriate or effective. Many dedicated people are working diligently within the existing structure, but the program is not fulfilling its potential because its structure does not support long term planning or good decision-making.

The lawyer-designed model of dispute resolution has created the current disjointed, silo structure as well as us-against-them institutional relationships and highly sensitive turf battles. We decide. We challenge. We review. We are the final decision-makers.

Some of the narrow and trivial differences that arise are reflected in the obscurity and truly marginal importance of some of the review topics considered important enough to include in this committee's terms of reference. There was no existing structure within which the issues could be discussed and resolved.

The committee does not expect that a team-work approach will emerge as each agency clings to its turf, traditional role and isolation from the others. No tangible progress has been made since the Auditor General's call in 1998 to rise above territorial, adversarial relationships to shape an integrated approach.

Stakeholder expectations are not being fulfilled. Workers and employers, paying for, and dependent upon, this most important program can be better served. There is "no comprehensive authority for providing guidance on the operational aspects of the system due to the different reporting relationships and responsibilities."[147]

It is time to create a better instrument and vehicle to achieve integration by creating an oversight, policy-making body which has the express authority and mandate to create a strategic plan for and govern the health and safety and workers' compensation program. This can happen without change to the organizational structure or management style of the four agencies. It can happen initially without changes to the existing management and control processes within each agency.

A change in the responsibilities and structure of a governing board is necessary. That board will have to adopt a governance process for oversight of the occupational health and safety and workers' compensation program that emphasises co-operation and focuses on outcomes.

The committee emphasizes that the persons appointed to this governing board must have the requisite talents and expertise. They must be independent persons truly representative of, and acceptable to, the labour and management communities.

Review Topic 1

Are the roles, responsibilities, relationships and governance of the Workers' Compensation Board (WCB); the Workers Advisers Program (WAP), and the Workers Compensation Appeals Tribunal (WCAT) appropriate and effective in the accountability framework under the *Workers' Compensation Act*?

Response

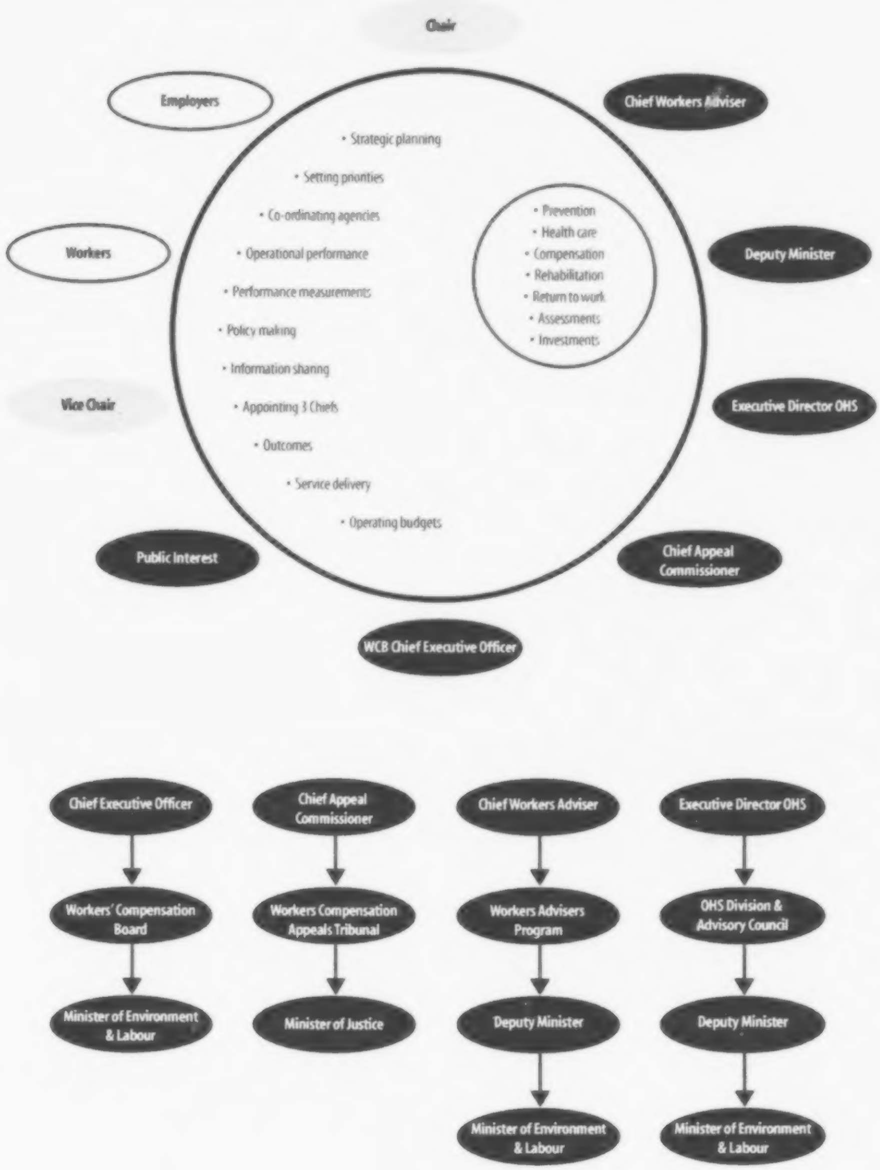
No.

Recommendation

Amend the act to reconstitute the board of directors of the Workers' Compensation Board to have all the responsibilities of the current board of directors plus governing oversight of the Occupational Health and Safety Division, Workers Advisers Program and Workers Compensation Appeals Tribunal.

The deputy minister of Environment and Labour and the chief appeal commissioner are to be added as non-voting members of the board. The authority to appoint the chief executive officer of the Workers' Compensation Board, the executive director of the Occupational Health and Safety Division and the chief workers adviser is to be transferred to this reconstitued board of directors.

Fig 9.9 **Board of Directors – Occupational Health and Safety, and Workers' Compensation**


Chair
Employers
Chief Workers Adviser
Workers
Deputy Minister
Vice Chair
Executive Director OHS
Public Interest
Chief Appeal Commissioner
WCB Chief Executive Officer
• Strategic planning
• Setting priorities
• Co-ordinating agencies
• Operational performance
• Performance measurements
• Policy making
• Information sharing
• Appointing 3 Chiefs
• Outcomes
• Service delivery
• Operating budgets
• Prevention
• Health care
• Compensation
• Rehabilitation
• Return to work
• Assessments
• Investments
Chief Executive Officer
Workers' Compensation Board
Minister of Environment & Labour
Chief Appeal Commissioner
Workers Compensation Appeals Tribunal
Minister of Justice
Chief Workers Adviser
Workers Advisers Program
Deputy Minister
Minister of Environment & Labour
Executive Director OHS
OHS Division & Advisory Council
Deputy Minister
Minister of Environment & Labour

10. Summary of Recommendations

Chapter	Review Topic	Response and Recommendation
The committee ordered the review topics around six major themes. This summary aligns the topics in that order.		
1. Introduction		
2. Mandate		
3. Crisis and Change		
4. Coverage	**General coverage issues**	• Repeal the three-worker exclusionary rule. • Extend coverage to all family members who are workers, regardless of where they live. • Amend the statute to allow the board to extend special protection coverage to all excluded persons.
	6. What is the status and coverage of casual employees and working owners? Are these coverages appropriate?	• The status and coverage described are not appropriate. Casual employees and working owners are no less likely, and perhaps more likely, to suffer work-related injuries and diseases and require the benefit of coverage.
	8. Should the benefit that sole proprietors enjoy in respect of the "three-worker" rule be extended to apply to incorporated firms of the same size?	• No. Eliminate the distinction and treat sole proprietors and partners the same as active directors on payroll.
	9. In light of the emergence of new industries including for example technology and communication, is there a need to clarify which industries are subject to mandatory coverage under the act? If so, how should this be accomplished?	• Yes. By amending the statute to make coverage compulsory for all industries unless excluded by Cabinet regulation.
	15. What has been the impact of the Functional Restoration (Multi-faceted Pain Services) Program Regulations, and the WCB's chronic pain program, including its rehabilitation aspects.	• Minimal and questionable.

	16. Are changes required to simplify the calculation of the two day "waiting period" after the point in time when an accident occurs?	• Amend the statute to require the employer to compensate an injured worker at the regular rate of pay for the day of an injury, provided the worker immediately reports the injury. For the day following and subsequent days, the worker is to be compensated from the Accident Fund.
5. Revenue	**3.** Is the system that is used by the WCB to classify firms for purposes of setting an assessment rate (i.e. using industry groups) appropriate?	• Yes.
	4. If the answer to the previous question is "yes", is the manner of assigning a firm to a particular class appropriate?	• Yes.
	27. Does the investment return earned by the WCB compare favourably to that of its Canadian counterparts and to pension funds?	• Yes.
6. Prevention	**5.** Is experience-rating of employer assessments working well and positively impacting prevention?	• The committee agrees with the Workers' Compensation Board. There is no conclusive evidence that experience rating positively impacts employers' prevention efforts.
7. Benefits	**General benefits issues**	• Over time, increase the indexing of benefits from 50% to 100% of the Consumer Price Index (CPI). Amend the Supplementary Benefit Regulations to remove the monthly maximum payment and increase the income threshold for individuals to one-half the average industrial wage from year to year.
	7. Is WCB policy and practice for calculating earnings replacement benefits appropriate, in particular relative to claimants with prior periods of no or unusually low earnings?	• The board should use a pre-injury period of time that is more certain and less discretionary. For workers with prior periods of no or unusually low earnings, a minimum amount of earnings to be determined by policy should be used as deemed earnings for the worker.

Chapter	Review Topic	Response and Recommendation
7. Benefits	**12.** Is the level of maximum assessable/insurable earnings appropriate?	• A maximum assessable/insurable earnings at 152% of the average industrial wage as determined by StatsCan in accordance with the North America Industrial Classification System is appropriate. For 2002, this would be $44,500.
	13. What are the pros and cons of "commutation on demand" of permanent benefits and should the present approach of the board be modified?	• The board's present approach should be modified. The board should create a presumption in favour of granting a request to commute when the worker and the worker's spouse jointly request commutation after having received independent financial advice and acknowledged they understand the consequences of receiving a lump sum rather than future periodic payments. The board should be able to adopt valuation assumptions for calculating a commuted amount that protects the Accident Fund from the interest rate risk, perhaps by using long-term economic assumptions rather than current market conditions.
	14. In certain circumstances the amount of a worker's temporary earnings replacement benefits are reduced by the amount of any pension being paid under the former act for a permanent medical impairment, as required by section 48(1). Should there be a maximum level of compensation payable to a worker who receives multiple WCB payments? If so, is the current maximum level appropriate?	• The circumstances are not frequent and anomalous. As time passes, they will become less frequent. No change should be made to section 48 (1).

8. Adjudication, Medical Opinions and Appeals	**10.** Is the method for generation of internal and external medical opinions appropriate, in this and other contexts in the compensation system?	• The committee is unable to say if it is appropriate in all circumstances. The board should look for opportunities to standardize the format of medical opinions and ensure that conflicting opinions about the circumstances of a single worker ask and answer the same question. The board should not require unnecessary reports and opinions from physicians confirming what should be evident. The board should set passage-of-time or other objective standards entitling workers to PMI reassessment without having to gather medical opinions to persuade the board that a reassessment is warranted.
	11. Would the Medical Review Commission referenced in Sections 203-205 of the act be an effective and efficient addition to the claims investigation process? If so, what challenges need to be addressed, and what are the appropriate procedural safeguards and any mechanisms necessary to ensure the continued independence of the appeal process?	• No.
	20. Are the internal and external appeal systems both necessary and working well?	• Yes. Both are necessary to provide the balance between internal board review of initial adjudication and external independent review of board decisions. They provide timely, consistent decisions in an efficient manner. With the retirement of the backlog, this is an opportune time for the appeal process to be opened to appeal decision-makers from disciplines other than law and to explore more proactive case management and alternative approaches to dispute resolution.
	21. Should subsection 193 (3) of the act be amended to require the WCB to provide an employer, who is a participant in a Tribunal appeal, with a copy of any appeal document or record in the board's possession that is relevant to the appeal?	• No. The act should be amended to give the Workers Compensation Appeals Tribunal this authority with a legislated limitation of the further disclosure or use of the documents, records and information they contain by the employer beyond the appeal proceedings, which includes any further proceedings before the court of appeal.

Chapter	Review Topic	Response and Recommendation
8. Adjudication, Medical Opinions and Appeals	**22.** Should the requirement, under clause 246 (1) (b), that WCAT decide an appeal in accordance with "any additional evidence the participants present," be made subject to any time limits imposed by the Tribunal, pursuant to Section 240 of the act?	• No. There should be no statutory time limits. This is the last level at which new evidence is to be considered and the WCAT has the responsibility to manage its process, including referrals to hearing officers, in a manner that is both efficient and fair.
	23. Should WCAT's jurisdiction under subsection 251 (1) , to refer any matter connected with an appeal to the Hearing Officer who decided the matter be expanded to allow it to remit back to the board, generally, or to give directions to the board or the Hearing Officer in the context of the referral?	• No.
	24. Should WCAT's power, under subsection 252(3), to correct errors be expanded? Should WCAT be extended the power to reconsider its own decisions in specified circumstances?	• Yes. At its discretion and with the consent of all parties, WCAT should have authority to correct errors of jurisdiction, breaches of duty of natural justice and breaches of the duty of fairness through rescinding and reconsidering a decision.
	26. How does the percentage of initial WCB awards changed after internal or external appeals compare to the experience of other Canadian WCB's.	• There is no conclusive basis on which this question can be accurately answered. The committee's sense, based on the available data on the rate of acceptance of appeals, is that the percentage is comparable or similar.

9. Accountability	**General accountability issues**	• The board of directors adopt a policy that requires public consultation in the policy development process by the Workers' Compensation Board prior to approval by the board of directors. • Amend the structure so the chief workers adviser reports to the deputy minister. • Amend the statute to give the Workers Advisers Program a right of access to the board file if any worker it confirms it is representing. • The board should set performance standards for timely implementation of appeal decisions and monitor and report its performance against the standards. • The minister should ensure there is a single, coordinated strategic plan that establishes broad objectives for the entire health and safety and workers' compensation program within one year. • By legislation or regulation require each agency in the health and safety and workers' compensation program to publicly report the results of their monitoring for compliance each year. • Amend the act to provide for the appointment every four years of a committee representative of workers and employers to review and report on the statute and regulations and their administration.
	1. Are the roles, responsibilities, relationships and governance of the Workers' Compensation Board, the Workers Advisers Program, and the Workers Compensation Appeals Tribunal appropriate and effective in the accountability framework under the *Workers Compensation Act*?	• No. Amend the act to reconstitute the board of directors of the Workers' Compensation Board to have all the responsibilities of the current board of directors plus governing oversight of the Occupational Health and Safety Division, Workers Advisers Program and Workers Compensation Appeals Tribunal. • The deputy minister of Environment and Labour and the chief appeal commissioner are to be added as non-voting members of the board. The authority to appoint the chief executive officer of the Workers' Compensation Board, the executive director of the Occupational Health and Safety Division and the chief workers adviser is to be transferred to this reconstituted board of directors.

Chapter	Review Topic	Response and Recommendation
9. Accountability	**2.** Given the particular role of the Minister of Environment and Labour in relation to the WCB and WAP considering issues of both accountability and agency independence, what actions are appropriate if the Minister has concerns about agency policy, operational decisions or administration in the context of each of these agencies?	• It is appropriate for the minister to take steps consistent with ministerial accountability. These include proposing regulations; directing agency policy; expressing concerns strongly to the board of directors and chief workers adviser, as was done in 1995 with respect to the need for a chronic pain policy; requesting a complete report and Auditor General audit, if necessary; and regularly evaluating the performance of the appointees.
	17. Is it appropriate that advocacy associations of injured workers are supported only by their private resources? If not, for what particular purpose would new funding be suggested, from what sources and subject to what criteria?	• Advocacy associations should have the opportunity to obtain funding in the form of grants to assist in the pursuit of their advice, assistance and education, but not representation, endeavours on behalf of injured workers. The funding should come from the Workers Advisers workers. The funding should come from the Workers Advisers Program under regulations adopted by cabinet and administered by the chief workers adviser. The grant criteria in the regulations should include, but not be restricted to, the following: • The association is a legal entity with a membership and structure whose sole purpose is to serve injured workers. • The association's services include a defined service beyond the service provided by WAP. • The association has an established record of service, financial accountability and reporting to members.

9. Accountability	**18.** In the event of workers advisers appointments under Section 272 of the act, is there an adequate means to address the issues of service quality control, accountability and professional regulation and discipline? What is the desirability and feasibility of a system to train, certify and regulate individuals (such as members of injured workers groups) to represent other injured workers in proceedings under the act?	• There are no adequate means to address issues of service quality, control, accountability and professional regulation and discipline. It is not desirable, at this time, to have a system to train, certify and regulate individuals (such as members of injured workers groups) to represent other injured workers in proceedings under the act.
	19. How does the level of service provided by the WAP compare to that of its Canadian counterparts, and is it appropriate?	• The data is not available from the Workers Advisers Program or its Canadian counterparts on which reliable comparison can be made. The WAP does not have comprehensive data on its current level of service from which a determination of the appropriateness of its service level can be made.
	25. What performance measures would be the most appropriate to determine how well the three agencies which make up the workers' compensation system are meeting their statutory mandates, within the framework of the act as a whole?	• The most appropriate performance measures are ones that measure and report • compliance with the statute • address access to, and identify barriers to, service • service delivery (timeliness, competence, courtesy and comfort, fair treatment and outcomes) • an integrated, systematic approach to the delivery of the program • a balance of financial and other measures.
	28. Does the ratio of administrative cost of the WCB, WCAT and WAP to the value of claims paid compare favourably to each agency's Canadian counterpart?	• The board's ratio compares favourably. WAP and WCAT ratios do not.

Appendices

Appendix A
Terms of Reference

Terms of Reference of the Review Committee established by the Governor in Council under s.161 of c. 10 of the Acts of Nova Scotia 1994-95, the *Workers' Compensation Act*

Committee Mandate

A. The Review Committee's mandate is to conduct a public review of the workers' compensation topics listed in these terms of reference while complying with parameters provided here to ensure input is solicited from stakeholders across Nova Scotia.

Standards for Consultation Processes

B. The Review Committee will design and implement a process to solicit input on the assigned workers' compensation topics from a broad spectrum of stakeholder interests and the general public across Nova Scotia. While the design of the process will generally be at the discretion of the Committee, the following consultation parameters shall apply.

C. Advertising of various means of providing input to the Committees shall identify at least the options of accessing the Committee by written submissions, E-mail communications, participation through groups involved in focused stakeholder sessions or by attendance at public hearings.

D. Public meetings are to be held at designated locations, with simultaneous meetings encouraged but always ensuring attendance by at least three Committee members, including the Chair or Vice-chair and both a worker and an employer representative. Designated locations shall include:

Halifax-Dartmouth (1 or 2 sessions)
Truro
New Glasgow
Antigonish
Port Hawkesbury
Sydney
Bridgewater
Liverpool or Shelburne
Yarmouth
Digby
Amherst
Kentville

E. Focused stakeholder sessions are to be held in the form of closed meetings of invitees and at least three Committee members including the Chair or Vice-Chair and both a worker and an employer representative. Invitations to such a session shall be extended to representatives of

(1) injured workers groups
(2) the employer community
(3) organized labour
(4) in a joint session, the Workers' Compensation Board, the Workers' Adviser Program and the Workers Compensation Appeals Tribunal.

Operating Principles and Quorum

F. The Review Committee shall respect and accept the diverse values, interests and knowledge of all of the parties involved in the process.

G. The Review Committee shall include either the Chair or Vice-chair and at least one Committee member from each of the employer and worker representatives at all public meetings organized by the Committee.

H. The Review Committee shall conduct Committee business at the call of the Chair. For the purposes of making decisions on the content of the Committee's Report, a quorum shall consist of the majority of the members of the Review Committee.

I. The Review Committee shall abide by these Terms of Reference.

J. The Review Committee shall work toward consensus whenever possible. In situations where the Chair determines that consensus cannot be reached on an issue, the Chair, when authoring the Report, will reflect on and report on all sides of the debate, and present a decision on the issue.

Deliverables and reporting deadline

K. The Committee shall submit a Report addressing the questions identified as Review Topics in these Terms of Reference. The Report may include any comment, conclusions or recommendations the Committee believes are appropriate as a result of its findings on the specified questions. Where a subject is not included in the list of review topics it may be considered by the Committee only to the extent that it impacts on a topic under review. This report is to be submitted to the Governor in Council on or before March 29, 2002.

L. Where information is received on matters beyond the scope of the review, the Committee will not address it in its Report, but at its discretion, may relay it to the Minister of Environment and Labour for information purposes.

Duration of sitting and time commitment

M. The Review Committee will sit for a maximum of 50 days during its appointment. The Chair may serve for such additional time as is reasonably necessary for the administration of the Review process and the preparation and submission of the Report. Subject to the approval of the Chair, the Vice-chair may also serve for any additional time as is reasonably necessary to perform duties delegated by the Chair.

Budget, staff remuneration and travel expenses

N. A budget for the review shall be developed in consultation between the Chair and the senior staff person serving the Committee, and approved by the Minister of Environment and Labour.

O. The Minister of Labour has determined that employees will be remunerated in accordance with the public service pay classification plan.

P. Expenses for accommodation and travel will be reimbursed based on established government policies in effect for employees (refer to Management Manual 500).

Review Topics

1. Are the roles, responsibilities, relationships and governance of the Workers' Compensation Board (WCB), the Workers Advisers Program (WAP), and the Workers Compensation Appeals Tribunal (WCAT) appropriate and effective in the accountability framework under the *Workers' Compensation Act?*
2. Given the particular role of the Minister of Environment and Labour in relation to the WCB and the WAP considering issues of both accountability and agency independence, what actions are appropriate if the Minister has concerns about agency policy, operational decisions or administration in the context of each of these agencies?
3. Is the system that is used by the WCB to classify firms for purposes of setting an assessment rate (i.e., using industry groups) appropriate?

4. If the answer to the previous question is "yes", is the manner of assigning a firm to a particular class appropriate?
5. Is the experience-rating of employer assessments working well and positively impacting prevention?
6. What is the status and coverage of casual employees and working owners? Are these coverages appropriate?
7. Is WCB policy and practice for calculating earnings replacement benefits appropriate, in particular relative to claimants with prior periods of no or unusually low earnings?
8. Should the benefit that sole proprietorships enjoy in respect of the "3 worker" rule be extended to apply to incorporated firms of the same size?
9. In light of the emergence of new industries including for example technology and communications, is there a need to clarify which industries are subject to mandatory coverage under the act? If so, how should this be accomplished?
10. Is the method for generation of internal and external medical opinions appropriate, in this and other contexts in the compensation system?
11. Would the Medical Review Commission referenced in Sections 203-205 of the act be an effective and efficient addition to the claims investigation process? If so, what challenges need to be addressed, and what are the appropriate procedural safeguards and any mechanisms necessary to ensure the continued independence of the appeal process?
12. Is the level of maximum assessable/insurable earnings appropriate?
13. What are the pros and cons of "commutation on demand" of permanent benefits, and should the present approach of the board be modified?
14. In certain cases the amount of a worker's temporary earnings replacement benefits are reduced by the amount of any pension

being paid under the former act for a permanent medical impairment, as required by subsection 48(1). Should there be a maximum level of compensation payable to a worker who receives multiple WCB payments? If so, is the current maximum level appropriate?

15. What has been the impact of the *Functional Restoration (Multi-Faceted Pain Services) Program Regulations*, and the WCB's chronic-pain program, including its rehabilitation aspects?

16. Are changes required to simplify the calculation of the two day "waiting period" after the point in time when an accident occurs?

17. Is it appropriate that advocacy associations of injured workers are supported only by their private resources? If not, for what particular purposes would new funding be suggested, from what sources and subject to what criteria?

18. In the event of workers' adviser appointments under Section 272 of the act, is there an adequate means to address issues of service quality control, accountability and professional regulation and discipline? What is the desirability and feasibility of a system to train, certify and regulate individuals (such as members of injured workers groups) to represent other injured workers in proceedings under the act?

19. How does the level of service provided by the WAP compare to that of its Canadian counterparts, and is it appropriate?

20. Are the internal and external appeal systems both necessary and working well?

21. Should subsection 193 (3) of the act be amended to require the WCB to provide an employer, who is a participant in a Tribunal appeal, with a copy of any document or record in the board's possession that is relevant to the appeal?

22. Should the requirement, under clause 246(1)(b), that WCAT decide an appeal in accordance with "any additional evidence the participants present", be made subject to any time limits imposed by the Tribunal, pursuant to Section 240 of the act?

23. Should WCAT's jurisdiction, under subsection 251(1), to refer any matter connected with an appeal to the Hearing Officer who decided the matter be expanded to allow it to remit back to the board, generally, or to give directions to the board or the Hearing Officer in the context of a referral?

24. Should WCAT's power, under subsection 252(3), to correct errors in a decision, be expanded? Should WCAT be extended the power to reconsider its own decisions in specified circumstances?

25. What performance measures would be most appropriate to determine how well the three agencies which make up the workers compensation system are meeting their statutory mandates, within the framework of the act as a whole?

26. How does the percentage of initial WCB awards changed after internal or external appeal compare to the experience of other Canadian WCB's?

27. Does the investment return earned by the WCB compare favorably to that of its Canadian counterparts and to pension funds?

28. Does the ratio of administrative cost of the WCB, WCAT and WAP to the value of claims paid compare favourably to each agency's Canadian counterparts?

Interpretation Guideline

For the purpose of any of the review topics, when making comparisons of the functioning of Nova Scotia workers' compensation system agencies to that of their counterparts in other Canadian jurisdictions, significant relevant impacts of differences in the laws in those places should be noted.

Appendix B
Member Profiles

Workers' Compensation Review Committee Member Profiles

James E. Dorsey, Q.C.
Chair

A graduate of Dalhousie Law School (1973) James Dorsey has vast experience in labour relations working as an arbitrator, grievance investigator, arbitrator-mediator and other roles in dispute resolution. He has published numerous books and articles on all aspects of employment law and is a recognized expert in workers' compensation. He is currently chair of a *Workers' Compensation Act* Committee of Review in Saskatchewan. In 2000 he served as the Minister's Special Representative reviewing the Saskatchewan Workers' Compensation Board. He has been Chair of the board of Governors of the British Columbia Workers' Compensation Board (1990-1994) and Interim President/Chief Executive Officer of the board (1993-1994).

Michael K. Power
Vice Chair

Michael Power is a partner with Power Dempsey Cooper & Leefe and has practiced law in Bridgewater for more than 25 years. He acted as counsel to the Nova Scotia Select Committee on Workers' Compensation in 1998.

Janet Hazelton
Nova Scotia Nurses Union

Janet Hazelton is a staff nurse in the Pre-Op Clinic at Colchester Regional Hospital in Truro. She holds a BSN from St. Francis Xavier University, and is the current Provincial Secretary/Treasurer for the

Nova Scotia Nurses Union. She chairs the day care owned and operated by staff of Colchester Regional Hospital and is active in community minor sports.

Carol MacCulloch
Construction Association of Nova Scotia

Carol MacCulloch is the President of the Construction Association of Nova Scotia (a trade association representing the non-residential construction sector) and is the past co-chair of the Nova Scotia Advisory Council on Occupational Health and Safety. Ms. MacCulloch was very active in the Occupational Health and Safety Legislative Review Project that led to the adoption of new legislation. She is also a director of the Construction Safety Association. Ms. MacCulloch holds a Masters degree in Atlantic Canada Studies and completed her thesis on workers' compensation.

Gary Penny
Cape Breton Injured Workers' Association

An injured worker himself, Gary Penny was employed by Canada Post for 23 years. He was very active with the Letter Carriers Union of Canada and served at the national level as a health and safety officer representing the Atlantic Region. Mr. Penny has been involved with the Cape Breton Injured Workers' Association for several years and was a labour representative on the board of directors of the WCB.

Steve Rankin
Canadian Manufacturers and Exporters Association

Steve Rankin is a former Chair and President of Devco, and is the current Chair of Seagull Pewter . He is very experienced in several different areas of industry, having worked at Stora Enso in Port Hawkesbury and provided management consulting services for clients throughout Nova Scotia.

Bob Cook
Nova Scotia Association of Health Organizations
Bob Cook is the President and CEO of the Nova Scotia Association of Health Organizations, a voluntary organization of hospitals and nursing homes throughout Nova Scotia. He has worked in the health care field for almost 25 years.

Betty Jean Sutherland
Nova Scotia Federation of Labour
Betty Jean Sutherland is the President of the Nova Scotia wing of the Canadian Union of Public Employees (CUPE) and is an Occupational Health and Safety Appeal Panel member. She has been a member of the Occupational Health and Safety Advisory Council and has been on the OHS and Workers' Compensation Committees for the Canadian Labour Congress.

Appendix C
Glossary of Terms

Annuity

At age 65 if a worker is still receiving an Extended Earnings Replacement Benefit (EERB), it will cease and be replaced by an annuity that is created when the worker starts receiving long-term benefits. This fund is created by the WCB setting aside an additional five percent of the worker's total EERB and PIB into the annuity. This amount may be paid as a lump sum or in installments, depending upon the amount of the annuity and the preferences of the worker.

Death Benefit

The WCB provides a lump-sum Death Benefit of $15,000 to the spouse of a worker. This is a one-time payment. If the worker was receiving compensation at the time of the accident, the WCB pays the spouse an additional lump sum of three times the worker's monthly benefit.

Deeming

After a period of time on benefits, the WCB can determine that an injured worker could earn all or a portion of the worker's former wages. For example, if medical evidence indicates that a worker could return to work, but has not found employment, the WCB may determine that the worker could be earning the minimum wage, and deduct this amount from the worker's benefits.

Experience Rating System

This is the method by which the WCB adjusts assessment rates for individual employers in the province. It works by comparing an individual company's claims cost (or accident) experience to the average for other firms in their rate group. Claims cost experience is the cost of new claims over the previous three years divided by the employer's assessable payroll over the same time period.

Extended Earnings Replacement Benefit (EERB)

An EERB compensates an injured worker for a permanent loss of earnings, and is based on the difference between the worker's earnings before the accident and their earnings or ability to earn after the accident. This difference is called the workers' earnings loss. The worker is eligible for an EERB if the difference between their earnings loss and their PIB is greater than zero.

Functional Restoration Program (FRP)

The WCB has a program in place for workers who were injured after February 1, 1996 who are at risk of developing or who have developed chronic pain. This program, known as the Functional Restoration Program, is based on the concept of returning to function and work as part of the rehabilitation program.

Long-term Benefits

There are two types of workers' compensation benefits for a worker who has a permanent injury. A worker may be entitled to one or both of these benefit types: an EERB (extended earnings replacement benefit, and/or a PIB (permanent impairment benefit).

Loss of Earnings

If a worker's financial loss is greater than their PIB, they may also receive an Extended Earnings Replacement Benefit (EERB). The EERB compensates an injured worker for a permanent loss of earnings, and is based on the difference between the worker's earnings before the accident and their earnings or ability to earn after the accident. This difference is called the workers' earnings loss. The worker is eligible for an EERB if the difference between their earnings loss and their PIB is greater than zero. If it is, the worker is eligible for an EERB calculated at 75 per cent of their net weekly earnings for 26 weeks after their accident, and then 85 per cent of the difference until he or she is 65 years old.

Loss of Physical Ability

A worker who suffers a permanent impairment as a result of a work-related injury or disease may be entitled to a Permanent Impairment Benefit (PIB). A PIB compensates an injured worker for a permanent loss of physical ability of a particular body part or area as a result of a workplace injury. Eligibility is determined by a review of the medical information on the worker's file, as well as a medical assessment performed by a WCB medical advisor. The assessment is used to assist the WCB case worker in determining a Permanent Medical Impairment (PMI) rating. This is used, in part, to calculate a PIB. The calculation is: PIB= (PMI rating x 30%) x (85% x net average weekly earnings).

Maximum Earnings

This is the maximum earnings level used to pay benefits. In 2001 the maximum insurable earnings level was $41,100 (gross). Employers are allowed to top-up workers' benefits if they choose, but they are not required to. The 2002 maximum insurable earnings level remained the same level as in 2001.

Permanent Impairment Benefit (PIB)

A PIB compensates an injured worker for a permanent loss of physical ability of a particular body part or area as a result of a workplace injury. Eligibility is determined by a review of the medical information on the worker's file, as well as a medical assessment performed by a WCB medical advisor. The assessment is used to assist the WCB case worker in determining a Permanent Medical Impairment (PMI) rating. This is used, in part, to calculate a PIB.

Short-term Benefits

Workers' compensation benefits are based on an earnings-loss system. This means the worker is paid a percentage of the wages lost as a result of an injury. This is often the difference between what they were earning before their injury and what they were earning after the injury, commonly called their earnings loss. See Temporary Earnings Replacement Benefits below.

Survivor Benefits

If a worker dies in, or as a result of, a workplace accident or from an occupational disease, the worker's dependants may be eligible for certain survivor benefits. In cases of an occupational disease or illness, an autopsy may be required to determine the cause of death.

Temporary Earnings Replacement Benefits (TERB)

These benefits are usually paid every two weeks for as long as a worker is medically unable to return to work. For the first 26 weeks a worker is compensated, the TERB is equal to 75 per cent of their net earnings loss. If a worker is off work due to the accident for more than 26 weeks, the TERB then increases to 85 per cent of their net earnings loss, and is evaluated for Extended Earnings Replacement Benefits (EERB).

Vocational Rehabilitation Program

For workers who suffer permanent impairment and are unlikely to return to their pre-accident employment, the WCB may provide a vocational rehabilitation program. A vocational rehabilitation plan is developed to assist the worker in overcoming difficulties that may affect their return-to-work, and help the worker get a job at a wage level similar to that of their previous position. The plan may include services like skills or educational upgrading, job search preparation and on-the-job training.

Window Period

This is the period from March 23, 1990 when the Hayden case was decided to February 1, 1996, when the new *Workers' Compensation Act* came into effect.

Waiting Period

There is a waiting period before an injured worker can receive earnings-loss benefits from the WCB. This period is currently two-fifths of the worker's normal work week. If a worker is on benefits for more than five weeks, this two-fifths amount will be returned to the worker, or to the employer if the employer has paid the employee for this time period.

Appendix D
Key Reports, Legislation and Judicial Decisions in The Evolution of The Workers' Compensation Program

1900	Employers' Liability Act
1910	Workmen's Compensation Act
1915	Workmens' Compensation Act, 1915 (no-fault)
1927	Royal Commission (Dennis Commission)
1935	Logan Report (Alfred T. Logan, Workers Compensation Report, unpublished, May 17, 1935)
1937	Royal Commission (Hanway Commission)
1954	Complete Revision of Legislation
1958	Royal Commission (McKinnon Commission)
1968	Royal Commission (Clarke Commission)
1968	Substantial Revision of Statute
1969	Harris Report on Fish Processing Industry
1973	Select Committee
1974	Select Committee
1977	Pneumonoconiosis Report
1978	Committee of Review
1981	Select Committee
1984-85	External Management Consultants' Reports to the WCB
1985	Auditor General's Report (Reviewed four management consultants' reports on the administrative structure and internal divisions of the WCB)
1988	"The Turning Point" (Ministerial Action Group)
1989	"Changing to Meet Today's Challenges", Labour Department White Paper
1990	*Hayden* Decision, NS Court of Appeal
1990	Select Committee Heard Public Submissions on Bill 99
1990	*MacKay* decision, NS Court of Appeal

1991	Report of the Select Committee: Bill 99 tabled, but not passed
1992	Bill 283: new Board of Directors, comprised equally of labour and employer representatives
1993	Discussion Paper on "The Calculation of Benefits"
1993	Peat Marwick Stevenson & Kellogg "Cost Driver Study"
1994	Proposals for Reform Discussion Paper
1994-95	New *Workers' Compensation Act*, Royal Assent Feb 5, 1995, earnings loss proclamation Feb 1, 1996
1995	Stakeholder Discussion Paper on Chronic Pain
1996	Auditor General's Report
1997	*Doward* Decision, NS Court of Appeal
1998	Auditor General's Report
1998	Select Committee
1999	Amendments to the *Workers' Compensation Act*, Bill 90
2000	*Laseur* and *Martin* Decisions, NS Court of Appeal
2001	Review Committee Appointed
2001	Leave to Appeal to Supreme Court of Canada granted for *Laseur* and *Martin* Decisions on Chronic Pain
2002	Workers' Compensation Review Committee Report

Appendix E
Workers' Compensation Review Committee Timeline and Public Meeting Schedule

Process	Time frame
1. Establish overall work plan, research and communications plans, responsibilities, budget and protocols for completing Terms of Reference	April-May 2001
2. Gather background information; initiate research and statistical compilation; meet with three Workers' Compensation agencies; recruit staff; create website; include newly appointed members	April-May, 2001
3. Focus Group meetings; ongoing information gathering and research; organization of public meetings	June, 2001
4. Review and analysis of information and statistics; notice of public meeting; preparation of statistical tables and charts for public release to assist groups with their submissions; ongoing research and information gathering.	July-August, 2001
5. Public meetings; review and analysis of written and oral submissions; Focus Group meeting with three Workers' Compensation agencies	Late September – Early October, 2001

6. Review of submissions, information gathered and research compiled; Committee discussion of Review Topics and report	October, 2001
7. Committee meetings to review drafts of report	November – December, 2001
8. Edit, finalize, approve and print report for presentation to Government	January – March, 2002

Public Meeting Schedule

Truro
Monday, Sept. 24, 2001
Forrester Hall, 3rd Fl.
N.S. Community College, Truro

Halifax
Tuesday, Sept. 25
Dartmouth Holiday Inn
Alderney Room

Halifax
Wednesday, Sept. 26
Dartmouth Holiday Inn
Alderney Room

Amherst
Thursday, Sept. 27
Amherst Wandlyn Inn

Sydney
Monday, Oct. 1
Steelworkers Hall

Sydney
Tuesday, Oct. 2
Steelworkers Hall

New Glasgow
Wednesday, Oct. 3
Museum of Industry
New Glasgow, Stellarton

Port Hawkesbury
Thursday, Oct. 4
Port Hawkesbury Nautical Institute
Strait Area Campus Theatre

Antigonish
Thursday, Oct. 4
Bloomfield Center, St. Francis Xavier University
Council Chambers

Yarmouth
Thursday, Oct. 4
Grand Hotel
Clare Argyle Room

Digby
Thursday, Oct. 4
Digby Royal Canadian Legion

Kentville
Friday, Oct. 5
Coldbrook Wandlyn Inn

Bridgewater
Friday, Oct. 5
Wandlyn Inn, Salon A

Liverpool
Friday, Oct. 5
Royal Canadian Legion
64 Henry Hensey Drive, Liverpool

Appendix F
Focus Group Sessions

1. Focus Groups Sydney
June 18, 2001

- Meetings were held with Employers: The Cape Breton Regional Board of Trade
- Meetings were held with Cape Breton Injured Workers Association

2. Focus Groups Sessions
Halifax, June 19, 2001

- Meetings were held with Employer Groups including: CFIB, CME, Canada Post, NS Home Builders Association, Metro Board of Trade, Canadian Restaurant and Food Services Association, NS Information Technology Association, NS Automotive Dealers Association and NS Forest Producers.
- Meetings were held with NS Provincial Injured Workers Association, CIWAR (Collaborating Injured Workers Association for Rehabilitation); Pictou County Injured Workers Association; Provincial Injured Workers Association of NS, and NS Network of Injured Workers.
- Meetings were held with Labour Groups including: NSFL, Nurses Union of Nova Scotia, CAW, NSTU, Halifax Regional Municipality Professional Firefighters Association, MAPP, IABSO, Food and Beverage Workers and Carpenters Union.

3. Focus Group Session
Halifax, December 13, 2001

- Workers' Compensation Board, Board of Directors

4. Focus Group Sessions
Halifax, January 14, 2002

- Meetings were held with representatives from the three agencies: Workers' Advisers Program, Workers Compensation Appeals Tribunal and the Workers' Compensation Board.

Appendix G
Public Meeting Presenters and Written Submissions

Presenters

For the consideration of the Workers' Compensation Review Committee, the following individuals and organizations made presentations:

1) Mr. Michael Adams – Colchester Ground Search & Rescue
2) Mr. Dave Albert – NS Health & Safety Consultant
3) Mr. Clarence Allard
4) Mr. Joe Awad
5) Ms. Cheryl Bagnell
6) Ms. Louise Bagnell
7) Mr. Arthur Baker
8) Ms. Joyce Balcom
9) Mr. Bob Baudoux
10) Mr. Ed Bennett
11) Ms. Shirley Bezanson
12) Ms. Noreen Boudreau
13) Mr. Henry Boutilier
14) Mr. Hubie Boutilier
15) Mr. Bob Briggs – NS Trucking Safety Assoc.
16) Ms. Lillian Carr
17) Mr. John Carrigan
18) Mr. Rick Clarke & Mr. Ray Larkin – NS Federation of Labour
19) Mr. Wayne Coady
20) Mr. Art Collins
21) Mr. Alan Comeau
22) Mr. David Conohan
23) Mr. Graham Conrad – Retail Gasoline Dealers Association of NS
24) Mr. Frank Corbett – NDP Caucus
25) Mr. William Crawford

26) Mr. Leonard Currie
27) Mr. Vernon d'Entremont
28) Mr. Robert Doucette
29) Mr. Terry Downey
30) Ms. Kathy Downing
31) Mr. Austin Doyle
32) Mr. Keith Eisner
33) Ms. Katherine Eldershaw
34) Mr. Don Ellis
35) Ms. Anne Ellsworth
36) Mr. Luc Erjavec – Can. Restaurant & Foodservices Assoc.
37) Ms. Maureen Ethier – CUPE Local 2774
38) Mr. Leo Evans – Devco Pensioners Assoc.
39) Mr. Steven Fitt
40) Mr. Jim Fitzpatrick
41) Mr. Hugh Forbes
42) Mr. Benson Frail
43) Mr. Norman Gillis
44) Ms. Peggy Hancock
45) Ms. Tara Hefler & Mr. Royce Hefler – Lifeline & Woodfibre Logging
46) Mr. Thomas Hope
47) Ms. Vicki Huston
48) Mr. Alphonse Jessome
49) Ms. Joan Jessome – NSGEU
50) Ms. Mary Kellock
51) Ms. Karen Kenny
52) Mr. Joe King
53) Mr. Ron Knox – Collaborating Injured Workers for Adequate Rehabilitation
54) Ms. June Labrador
55) Ms. Mary Larue
56) Mr. Barry Lawrence
57) Mr. Ben Legnaro
58) Mr. Bruce Lohnes
59) Mr. Jim Lyle

60) Mrs. Glenda MacCormack
61) Mr. Murray Ross MacDonald
62) Mr. Hugh MacIntyre
63) Ms. Sharon MacIntyre
64) Mr. Dave MacKenzie
65) Mr. Donald MacKenzie
66) Mr. Martin MacKinnon & Mr. Dan Cavanaugh- Eastern Rehabilitation Inc.
67) Ms. Robin MacLean – NSGEU
68) Ms. Betty MacLeod
69) Mr. Lauchie MacLeod – CB Injured Workers
70) Mr. Roger MacLeod
71) Mr. John MacNeil
72) Mr. Terry MacNeil
73) Ms. Willa Magee – Ocean Produce International
74) Mr. Larry Maloney
75) Mr. Bernard McCormack
76) Mr. Adam McKay
77) Ms. Heather McKeough
78) Mr. Albert McNeil
79) Mr. Mike Meechan
80) Ms. Meg Mooring
81) Ms. Joyce Morin
82) Mr. Paul Morrison
83) Ms. Beverly Mosher
84) Mr. Vince Muise
85) Mr. John Murphy
86) Ms. Elizabeth Nearing
87) Mr. Gary Noiles
88) Mr. Peter O'Brien CFIB
89) Mr. Clarence Oliver
90) Mr. Gerard O'Neill
91) Mr. Tom Patterson – NS Nurses Union
92) Mr. Wally Peters – NSPIWA
93) Mr. Wally Peters
94) Mr. Everett Petrie

95) Ms. Judith Pieper
96) Mr. Eddie Pipes
97) Mr. Reed Pleasant – United Brotherhood of Carpenters & Joiners of America
98) Dr. Harry Pollett – Chronic Pain Clinic, Northside General Hospital
99) Mr. Melbourne Poole
100) Mr. Elie Porier
101) Mr. Ray Power
102) Mr. Barry Reinhart
103) Mr. Leo Roach
104) Mr. Gary Rose
105) Mr. Dennis Ross
106) Mr. Harold Selig – Network of Injured Workers of NS
107) Ms. Joan Skehen for George Langille
108) Mr. Fielding Smith – United Steelworkers Local 1231
109) Mr. Loretta Smith
110) Mr. Gary Swinimer
111) Mr. Allen Taylor – Network of Injured Workers of NS
112) Mr. Claude Timmons
113) Mr. Jim Tobin
114) Mr. Gerard Tremere – Annapolis Valley Injured Workers' Self Help Group
115) Ms. Jackie Van der Meer
116) Mr. Roger Van Norden
117) Ms. Joanne Webb
118) Mr. Robert Wells – CUPE
119) Mr. Don White
120) Mr. Kevin Williamson
121) Workers' Compensation Board

Written Submissions

For the consideration of the Workers' Compensation Review Committee, the following individuals and organizations provided written submissions:

1) Ms. Susan Aucoin
2) Mr. Herb Babineau
3) Mr. Edward Bennett
4) Mr. Darroll John Blinn
5) Mr. Olan Brown
6) Ms. Anne Crossman
7) Mr. Gerard Daigle
8) Mr. Randy Daniels
9) Mr. Slawomir Drozdowski
10) Mr. Gerald Duggan
11) Mr. D.W.J. Forgeron – Insurance Bureau of Canada
12) Ms. Darlene Grant Fiander – Tourism Industry Association of Nova Scotia
13) Fundy Auto Salvage Ltd.
14) Mr. Tommy Harper – Forestry Safety Society of Nova Scotia
15) Ms. Sara Hazelton – Near to Me Day Care
16) Ms. Karen Henneberry
17) Mr. Walter Kozera
18) Mr. James Langille
19) Mr. Ross Levy
20) Ms. Barb Lewis
21) Ms. Mary Lloyd – Pictou County Injured Workers Association
22) Dr. Mary Lynch – Pain Management Unit, QEII Health Sciences Centre
23) Ms. Carol MacCulloch – Construction Association of NS
24) Mr. William MacIntosh
25) Mr. Daniel J. MacPhee
26) Mr. Jim Morrison
27) Mr. Clarence Newman
28) Ms. Margaret Petrie
29) Mr. Dale Pothier

30) Ms. Mary Richardson – Pictou County Injured Workers Association
31) Mr. John Rogers
32) Mr. Dick Smyth – Canadian Manufacturers & Exporters
33) Mr. Steve Southall – Marine Workers' Federation Local No. 1
34) Ms. Evelyn Sutherland
35) Mr. Steve Talbot – Forest Products Association of Nova Scotia
36) Mr. John Urquhart
37) WAP
38) WCAT
39) Mr. James Wile
40) Mr. John Wilson
41) Mr. Charles Foster Winters
42) Dr. Oscar Wong
43) Mr. Derek Wood
44) Ms. Marsha Yeaton – Kirk Forest Products Ltd.

Appendix H
Self Insured Revenue

Self Insured Claims Costs and Administration Fees (in millions)

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Self-Insured Claims Costs	$27,373	$25,834	25,473	25,184	24,861	26,549	22,243	22,590	24,102	25,335
Administration Fees	2,037	1,806	1.782	1,847	1,689	1,847	3.956	3,799	3,816	4.186
Self-Insured Revenue	29.411	27,640	27,255	27,031	26,549	27,031	26,199	26,389	27,918	29,521
Assessments From All Employers	108.237	115,516	129.561	143.094	149,451	143,094	156,495	168,532	180,379	192,750
Self-Insured as % of Total Employer Revenue	27.17%	23.93%	21.04%	18.89%	17.76%	18.89%	16.74%	15.66%	15.48%	15.32%
Self-Insured Administration Fees as % of Claims Costs	7.44%	6.99%	6.99%	7.34%	6.79%	12.01%	17.79%	16.82%	15.83%	16.52%
Total Claims Payments	117,047	117,694	119,501	113,300	104,632	107,446	90,714	96,316	112,207	123,958
Total Administration Costs	10,987	12,496	13,854	17,166	19,344	21,403	23,004	25,113	27,785	32,735
Total Administration Costs as % of Total Claims Payments	9.39%	10.62%	11.59%	15.15%	18.49%	19.92%	25.36%	26.07%	24.76%	26.41%
Self-Insured Costs as % of Total Claims Payments	23.39%	21.95%	21.32%	22.23%	23.76%	24.71%	24.52%	23.45%	21.48%	20.44%
Self-Insured Administration Fees as % of Total Administration Cost	18.54%	14.45%	12.86%	10.76%	8.73%	14.90%	17.20%	15.13%	13.73%	12.79%

Appendix I
Consolidated Master Data Table

Page

1. General Population and Employment in Nova Scotia 305
1.1 Nova Scotia Population by Age and Sex (July 1, 2000) 305
1.2 Employed Population (1991-2000) 306
1.3 Full and Part time Employment (1991-2000) 307
1.4 Distribution of Businesses by Number of Employees and WCB Region (2000) 307
1.5 Population & Employment (Full and Part time) 308
1.6 Businesses in NS 310
1.7 Registered Employers 310
1.8 Registered Employers by Industry Sectors 311
1.9 Earnings and Wage Replacement Benefits 312

2. Claims Information 313
2.0 New claims and reactivated claims 313
2.1 No Time Loss 314
2.2 Time Loss 314
2.3 Fatalities 314
2.4 Totals 314
2.5 Difference, Disallowed and Reactivated 315
2.6 Reopened/Reactivated 315

3. Workers with Registered Claims 315
3.1 Male 315
3.2 Female 316
3.3 Unknown Gender 317

4. Workers with Reopened and Repeat Claims 319
4.1 Male 319
4.2 Female 320
4.3 Unknown Gender 321

		Page
5.	**Claims Regional Profile**	**322**
5.1	Halifax County	322
5.2	Halifax City	322
5.3	Central North Shore	323
5.4	South Shore Valley	323
5.5	Cape Breton	323
5.6	Other	324
6.	**Claims by Year Accepted**	**325**
6.1	Time Loss and Fatalities	325
6.2	No Time Loss	326
7.	**Claims Costs**	**327**
7.1	Costs	327
7.2	Claims Costs Paid by Year	327
7.3	Claims Costs Paid by Type	327
7.4	Claims Costs Charged by Year	328
8.	**Injury Rates**	**328**
8.1	Average Injury Rate	328
8.2	Injury Rates by Industry Sector	329
9.	**WCB Staff and Administration Costs**	**330**
9.1	Staff	330
9.2	Administration Costs	330
9.3	Administration Expenses	331
10.	**Legislated Obligations**	**332**
11.	**Income**	**333**
11.1	Assessments	333
12.	**Fund Balance**	**334**
12.1	Actuarial Assumptions	334

Page

13. Claims Registered By Firms **334**

13.1 Number of Firms 334

13.2 Percentage of all Firms 335

13.3 Number of New Claims Registered 335

13.4 Percentage of New Claims Registered 335

14. Duration of Claims **336**

14.1 Average by Industry Group 336

15. Assessable Payroll by Industry Group **337**

15.1 Assessable Payroll 337

15.2 Percentage of Total Payroll 338

16. Claims by Industry Group **339**

16.1 Number of Claims Registered 339

16.2 Percentage of Registered Claims 340

16.3 Number of Compensable Time Lost Claims 341

1.0 General Population and Employment in Nova Scotia

1.1 Nova Scotia Population by Age and Sex (July 1, 2000)

Age	Total	Male	Female
0-9	105,449	55,748	52,701
10-19	126,921	65,081	61,840
20-29	125,643	62,777	62,866
30-39	148,054	73,451	74,603
40-49	150,845	74,845	76,000
50-59	116,571	57,963	58,608
60-69	75,871	36,858	39,013
70-79	55,820	24,049	31,777
80 +	32,822	10,919	21,903

Source: Statistics Canada, "Annual Estimate of Population" December 12, 2000

1.2 Employed Population (1991-2000)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Population	915,068	919,350	923,704	926,322	927,710	931,235	934,538	938,110	939,222	940,998
Workers Labour Force	433.6	426.6	429.5	431.5	428.9	431.1	437.4	445.9	452.0	461.6
Unemployment Rate	12.1	13.2	14.3	13.5	12.1	12.3	12.1	10.5	9.6	9.1
Employed Workers (,000's)	381.0	370.4	367.9	373.3	377.1	378.1	384.3	398.9	408.6	419.5
Private Sector Workers	230.7	221.1	216.7	222.7	225.2	225.4	228.9	241.4	255.8	264.1
Public Sector Workers	102.3	101.8	100.9	100.3	98.7	95.6	95.3	97.0	92.6	97.0
Self-employed	48.0	47.5	50.4	50.3	53.2	57.1	60.0	60.5	60.2	58.4

Source: Statistics Canada, Labour Force Historical Review, 2000.

1.3 Full and Part-Time Employment (000s) (1991-2000)

	1991		1992		1993		1994		1995		1996		1997		1998		1999		2000	
	Full	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**	**Full**	**Part**
Both	311.1	69.9	299.9	70.4	297.8	70.2	298.4	74.9	300.7	76.4	301.6	76.5	304.1	80.1	320.4	78.5	330.4	78.2	341.2	78.3
Men	187.9	21.1	178.6	21.1	175.1	21.0	177.1	23.4	180.3	24.3	177.7	24.8	180.3	23.4	188.5	23.9	192.5	23.6	196.6	23.3
Women	123.2	48.8	121.3	49.3	122.7	49.2	121.4	51.5	120.4	52.1	123.8	51.8	123.8	56.7	131.9	54.7	137.9	54.7	144.4	55.1

Source: Statistics Canada, NS Employment Statistics 2000

1.4 Distribution of Businesses by Number of Employees and WCB Region (2000)

Number of Employees	<5	5 to 9	10 to 19	20-49	50-99	100-499	>500	Total
South Shore & Valley	10,804	1,728	1,113	687	191	128	20	14,671
Halifax	13,319	2,169	1,605	1,269	428	306	48	19,144
Central & North Shore	6,322	924	616	411	134	87	8	8,502
Cape Breton	4,929	776	512	303	100	70	8	6,698
Unknown Region	46	9	4	2				61
Total in Nova Scotia	35,420	5,606	3,850	2,672	853	591	84	49,076
Percentage of Total	72.2%	11.4%	7.8%	5.4%	1.7%	1.2%	.2%	100%
% of businesses with less than 20 employees				91.4%				

Source: Nova Scotia Business Registry, 2000

1.5 Population and Employment (000s)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Provincial Population (15 & over)	703.5	708.3	712.9	716.2	719.8	724.9	730.4	735.0	740.8	747.7
Male %	48.29%	48.24%	48.17%	48.10%	48.07%	48.05%	48.07%	48.07%	48.07%	48.12%
Female %	51.71%	51.76%	51.83%	51.90%	51.93%	51.95%	51.93%	51.93%	51.93%	51.88%
15–19 yrs	66.8	65.2	64.0	63.2	62.9	62.5	62.4	62.6	62.9	63.0
20–24 yrs	67.4	66.9	66.5	65.2	64.0	63.0	62.3	61.5	61.5	61.8
25–29 yrs	76.1	73.3	70.1	66.7	63.9	62.7	62.1	61.5	61.2	61.3
30–34 yrs	77.2	77.6	77.8	77.8	76.9	74.9	72.2	69.0	65.7	63.9
35–39 yrs	71.1	72.4	72.8	72.3	75.2	76.4	73.9	74.6	79.9	76.0
40–44 yrs	67.1	67.8	69.2	71.7	70.8	72.0	76.9	78.2	74.3	78.4
45–49 yrs	52.6	56.5	63.7	63.9	65.1	68.2	68.2	67.4	68.1	66.8
50–54 yrs	42.0	43.4	41.7	46.2	49.8	51.3	55.5	60.0	63.5	69.0
55–59 yrs	38.9	39.1	39.5	40.4	41.2	42.3	43.8	45.7	47.5	49.7
60–64 yrs	36.6	36.9	37.2	37.4	37.6	37.8	38.0	38.4	39.2	39.9
65 yrs & over	107.7	109.2	110.4	111.4	112.4	113.8	115.1	116.1	117.0	117.9

1.5 Population and Employment (000s) continued

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Employment Population (Full Time and Part Time Workers)	381	370.4	367.9	373.3	377.1	378.1	384.3	398.9	408.6	419.5
Male %	54.86%	53.94%	53.28%	53.68%	54.26%	53.56%	53.03%	53.22%	52.86%	52.40%
Female %	45.14%	46.06%	46.72%	46.32%	45.74%	46.44%	46.97%	46.78%	47.14%	47.60%
15–19 yrs	26.7	23.7	22.0	22.7	22.9	21.4	20.2	22.7	23.7	23.9
20–24 yrs	41.9	41.6	41.2	39.0	39.3	39.9	38.4	37.9	39.4	42.2
25–29 yrs	53.6	50.6	47.9	46.6	44.8	44.9	45.3	46.7	46.2	48.0
30–34 yrs	56.2	56.7	55.1	55.7	55.6	53.8	52.5	52.1	50.5	50.3
35–39 yrs	53.8	52.5	52.3	51.0	54.6	54.7	53.3	56.3	61.5	57.5
40–44 yrs	51.4	49.8	50.2	52.4	52.4	52.6	57.2	59.3	56.7	60.5
45–49 yrs	37.4	39.2	43.5	44.3	45.0	46.8	48.8	49.6	50.3	49.7
50–54 yrs	27.4	26.9	25.0	28.5	30.3	31.2	34.7	38.5	43.0	47.5
55–59 yrs	18.5	17.3	17.6	19.2	19.8	18.5	20.1	21.4	22.5	24.4
60–64 yrs	11.0	8.5	8.8	9.2	8.4	9.5	8.8	10.2	10.7	10.7
65 yrs & over	3.1	3.6	4.3	4.7	4.0	4.8	5.0	4.2	4.1	4.8
Unemployment Rates	12.10%	13.20%	14.30%	13.50%	12.10%	12.30%	12.10%	10.50%	9.60%	9.10%
Male %	12.40%	13.80%	15.50%	14.10%	12.70%	13.30%	13.30%	11.60%	10.30%	9.90%
Female %	11.80%	12.40%	12.90%	12.80%	11.30%	11.10%	10.80%	9.30%	8.80%	8.20%
15–19 yrs	18.80%	20.70%	24.20%	21.50%	19.70%	19.20%	24.60%	21.20%	21.10%	20.90%
20–24 yrs	19.90%	20.00%	19.80%	22.40%	18.70%	16.70%	19.00%	18.20%	16.40%	12.40%
25–29 yrs	14.80%	15.90%	16.80%	15.40%	14.50%	14.10%	14.00%	10.00%	10.10%	8.70%
30–34 yrs	13.00%	11.80%	13.40%	12.40%	11.50%	11.80%	11.80%	10.20%	8.30%	7.90%
35–39 yrs	9.90%	11.60%	13.80%	12.50%	10.90%	10.50%	11.10%	9.30%	8.10%	9.20%
40–44 yrs	7.90%	10.40%	11.50%	10.90%	9.50%	11.30%	8.90%	8.30%	8.40%	8.10%
45–49 yrs	7.00%	9.70%	9.90%	9.20%	8.90%	10.00%	8.60%	7.10%	6.50%	6.90%
50–54 yrs	6.80%	8.80%	11.00%	8.70%	7.90%	9.30%	7.70%	7.20%	5.70%	6.10%
55–59 yrs	10.20%	9.90%	10.20%	10.30%	9.20%	11.40%	9.90%	10.80%	7.80%	7.30%
60–64 yrs	7.60%	8.60%	12.00%	10.70%	11.60%	9.50%	0.20%	6.50%	7.00%	7.80%
65 yrs & over	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Population/Employment Ratios	1.85	1.91	1.94	1.92	1.91	1.92	1.90	1.84	1.81	1.78

1.6 Businesses in Nova Scotia

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Businesses	27,241	28,136	28,722	29,440	30,301	30,242	36,963	44,087	48,568	49,069
Number of Employees										
<5	17,002	17,109	17,412	18,298	18,782	18,767	24,454	31,813	35,562	35,417
5 to 9	4,560	4,732	4,860	4,882	5,013	4,933	5,072	5,223	5,442	5,606
10 to 19	2,683	3,065	3,202	3,054	3,196	3,239	3,644	3,537	3,807	3,850
20 to 49	1,828	2,123	2,119	2,105	2,193	2,160	2,583	2,334	2,502	2,672
50 to 99	566	626	640	612	624	658	708	658	712	853
100 to 499	373	419	431	417	421	415	426	447	473	595
>500	229	62	58	72	72	70	76	75	70	76

1.7 Registered Employers

Number of Registered Employers	15,558	15,231	15,210	15,163	15,086	15,491	15,504	15,443	15,628	16,196
Number of Employees	344,151	331,535	320,189	314,098	397,578	301,987	413,396	238,172	224,099	238,863
<5	6,275	5,632	5,856	5,515	3,225	3,998	3,757	4,127	4,400	10,581
5 to 9	3,801	3,774	3,529	3,316	2,267	2,588	2,511	2,732	2,862	2,440
10 to 19	2,463	2,621	2,585	2,508	1,781	1,711	1,614	1,804	1,967	1,476
20 to 49	1,653	1,804	1,745	1,645	1,240	1,121	1,100	1,209	1,283	1,018
50 to 99	590	580	532	566	410	397	354	444	450	377
100 to 499	386	426	387	405	293	252	233	280	286	252
>500	77	62	60	59	52	46	39	43	39	52
Unknown	313	332	516	1,149	5,818	5,378	5,896	4,804	4,341	0

1.8 Registered Employers by Industry Sectors

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	16,506	16,184	16,191	16,115	15,976	16,200	16,036	15,947	16,155	16,695
Agriculture	672	668	645	634	566	518	491	444	432	410
Communications	159	160	167	169	184	194	199	210	211	349
Construction	3,878	3,720	3,794	3,770	3,683	3,642	3,576	3,504	3,561	3,720
Health and Social Services	403	417	438	460	492	509	478	478	494	531
Financial Services	646	639	650	644	653	643	636	754	784	806
Fishing and Trapping	578	566	553	531	505	540	552	543	634	717
Logging and Forestry	713	670	670	650	656	637	606	609	626	597
Manufacturing	1,402	1,363	1,345	1,337	1,332	1,321	1,291	1,240	1,230	1,234
Mining	109	107	104	98	90	92	81	86	101	74
Other Services	1,009	1,006	995	983	1,001	1,023	985	975	983	1,005
Retail	3,180	3,101	3,065	3,070	3,001	3,086	3,001	2,921	2,857	2,833
Tourism and Food Services	1,471	1,474	1,479	1,490	1,543	1,578	1,610	1,561	1,571	1,522
Transportation	972	989	1,011	1,012	1,006	1,055	1,146	1,171	1,209	1,421
Wholesale	1,314	1,304	1,275	1,267	1,264	1,362	1,384	1,451	1,462	1,476

1.9 Earnings and Wage Replacement Benefits

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Average Annual Wage of Covered Workers	$22,890.40	$23,133.76	$23,150.40	$23,140.00	$23,192.00	$26,201.76	$26,208.00	$26,364.00	$26,884.00	$27,917.24
Average Weekly Wage of Covered Workers	$440.20	$444.88	$445.20	$445.00	$446.00	$503.88	$504.00	$507.00	$517.00	$536.87
Maximum Annual Assessable Wage	$36,000.00	$36,000.00	$36,000.00	$36,000.00	$38,000.00	$38,600.00	$38,600.00	$39,300.00	$39,700.00	$40,500.00
Maximum Weekly Assessable Wage	$692.31	$692.31	$692.31	$692.31	$730.77	$742.31	$742.31	$755.77	$763.46	$778.85
Maximum Annual Compensable Wage	$36,000.00	$36,000.00	$36,000.00	$36,000.00	$38,000.00	$38,600.00	$38,600.00	$39,300.00	$39,700.00	$40,500.00
Maximum Weekly Compensable Wage	$692.31	$692.31	$692.31	$692.31	$730.77	$742.31	$742.31	$755.77	$763.46	$778.85
Minimum Weekly Compensable Wage	$196.15	$196.15	$196.15	$196.15	$196.15	$196.15	$1.00	$1.00	$1.00	$1.00
Maximum Weekly Benefit	$372.39	$369.46	$368.87	$393.25	$383.88	$388.44	$388.98	$395.09	$400.49	$412.65
Minimum Weekly Benefit	$127.37	$127.25	$127.20	$140.05	$127.09	$127.10	$0.01	$0.01	$0.01	$0.01
Maximum Weekly Benefit as % of Average Weekly Wage	84.60%	83.05%	82.85%	88.37%	86.07%	77.09%	77.18%	77.93%	77.46%	76.86%

1.9 Earnings and Wage Replacement Benefits continued

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Minimum Weekly Benefit as % of Average Weekly Wage	28.93%	28.60%	28.57%	31.47%	28.50%	25.22%	0.00%	0.00%	0.00%	0.00%
Minimum Annual Benefit	$6,623.24	$6,617.00	$6,614.40	$7,282.60	$6,608.68	$6,609.20	$0.52	$0.52	$0.52	$0.52
Minimum Weekly Benefit	$127.37	$127.25	$127.20	$140.05	$127.09	$127.10	$0.01	$0.01	$0.01	$0.01
CPI Adjustment Factor	4.00%	4.00%	2.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.90%
Maximum Weekly Benefit (1991) Adjusted for CPI	$372.39	$387.29	$395.03	$395.03	$395.03	$395.03	$395.03	$395.03	$395.03	$398.59
Minimum Weekly Benefit (1991) Adjusted for CPI	$127.37	$132.46	$135.11	$135.11	$135.11	$135.11	$135.11	$135.11	$135.11	$136.3

2.0 Claims by Type and Acceptance

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
New Claims Registered	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Reopened/Reactivated Claims	4,158	2,627	1,697	1,433	872	1,876	1,084	677	544	308

2.1 No Time Loss Claims

New Claims Registered	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Accepted	22,817	20,778	20,380	18,865	19,973	19,164	19,970	20,532	22,790	22,251
% Accepted	56.20%	54.72%	54.16%	52.65%	58.94%	62.48%	62.23%	62.12%	65.01%	63.80%

2.2 Time Loss Claims

New Claims Registered	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Accepted	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200	9,061
% Accepted	31.36%	31.39%	35.60%	37.13%	31.03%	26.07%	25.53%	24.72%	23.42%	25.98%

2.3 Fatalities

New Claims Registered	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Accepted	27	47	26	10	21	15	16	18	23	17
% Accepted	0.07%	0.12%	0.07%	0.03%	0.06%	0.05%	0.05%	0.05%	0.07%	0.05%

2.4 Totals – New Claims

	1991	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
New Claims Registered	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Reopened/Reactivated Claims	4,158	2,627	1,697	1,433	872	1,876	1,084	677	544	308
Accepted	35,577	32,745	33,801	32,181	30,509	27,174	28,178	28,720	31,013	31,329
% Accepted	87.63%	86.23%	89.83%	89.81%	90.04%	88.60%	87.80%	86.90%	88.58%	89.83%

2.5 Difference – New/Reopened and Accepted

Not Pursued/Disallowed	5,021	5,227	3,828	3,651	3,376	3,497	3,914	4,330	3,997	3,545

2.5.1 Disallowed Claims

As % of Accepted	14.11%	15.96%	11.33%	11.35%	11.07%	12.87%	13.89%	15.08%	12.89%	11.32%
As % of New	12.37%	13.77%	10.17%	10.19%	9.96%	11.40%	12.20%	13.10%	11.42%	10.17%
As % of New and Reopened	11.22%	12.87%	9.73%	9.80%	9.71%	10.74%	11.80%	12.84%	11.24%	10.08%

2.6 Reopened/Reactivated Claims

Within 6 mths of initial closure	3,734	2,167	1,319	1,021	587	1,394	597	229	294	187
Within 6–12 mths of initial closure	297	312	221	240	136	242	304	134	92	47
After 1 year of initial closure	127	148	157	172	149	240	183	314	158	74
Total	4,158	2,627	1,697	1,433	872	1,876	1,084	677	544	308

3.0 Workers with Registered Claims

3.1 Male

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Workers with New Registered Claims	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Male Total	30,072	27,637	27,135	26,066	24,489	22,326	22,880	22,740	24,422	23,930
% of Total	74.07%	72.78%	72.11%	72.75%	72.27%	72.79%	71.30%	68.80%	69.76%	68.62%

3.1.1 Age at Date of New Claim

Unknown	4	9	29	35	54	24	26	41	76	46
Less than 20	946	657	610	615	558	503	580	646	795	835
20–24	3,869	3,277	3,366	3,161	3,005	2,533	2,560	2,708	2,967	2,900
25–29	5,251	4,559	4,293	4,047	3,669	3,386	3,171	3,052	3,313	3,183
30–34	5,304	4,835	4,831	4,710	4,307	3,870	3,691	3,346	3,468	3,322
35–39	4,470	4,357	4,350	4,196	4,030	3,774	3,836	3,672	3,879	3,572
40–44	3,696	3,523	3,330	3,289	3,190	2,993	3,173	3,276	3,478	3,379
45–49	2,546	2,626	2,651	2,675	2,564	2,404	2,583	2,523	2,686	2,731
50–54	1,846	1,818	1,794	1,675	1,651	1,476	1,774	1,845	2,004	2,089
55–59	1,274	1,202	1,142	1,054	982	874	959	988	1,072	1,142
60–64	649	559	543	484	365	388	410	433	498	476
65 or older	217	215	196	125	114	101	117	210	186	255

3.2 Female

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Workers with New Registered Claims	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Female Total	10,458	10,226	10,308	9,675	9,355	8,292	9,164	10,278	10,534	10,898
% of Total	25.76%	26.93%	27.39%	27.00%	27.61%	27.04%	28.56%	31.01%	30.09%	31.25%

3.2.1 Age at Date of New Claim

Unknown	4	2	11	22	16	12	17	31	33	23
Less than 20	325	227	254	258	259	237	283	343	383	485
20–24	1,349	1,219	1,213	1,119	1,126	931	991	1,096	1,199	1,248
25–29	1,857	1,702	1,552	1,398	1,259	1,163	1,189	1,325	1,275	1,286
30–34	1,814	1,748	1,849	1,677	1,543	1,313	1,428	1,443	1,362	1,351
35–39	1,589	1,631	1,600	1,590	1,559	1,366	1,467	1,724	1,731	1,784
40–44	1,283	1,395	1,389	1,361	1,350	1,160	1,377	1,601	1,559	1,658
45–49	969	1,053	1,123	1,111	1,107	994	1,120	1,210	1,353	1,401
50–54	669	702	753	657	663	642	755	930	1,003	1,041
55–59	402	372	386	350	356	353	404	425	473	459
60–64	162	155	158	92	105	105	116	135	139	125
65 or older	35	20	20	40	12	16	17	15	24	37

3.3 Unknown Gender

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Workers with New Registered Claims	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Unknown Gender Total	68	109	186	91	41	53	48	32	54	46
% of Total	0.17%	0.29%	0.49%	0.25%	0.12%	0.17%	0.15%	0.01%	0.15%	0.13%

3.3.1 Age at Date of New Claim

Unknown	0	0	1	0	2	1	0	0	0	0
Less than 20	9	10	8	8	10	0	1	1	8	4
20–24	18	25	35	11	8	7	4	4	10	6
25–29	15	24	39	20	4	11	13	3	7	4
30–34	6	9	29	9	8	6	13	8	7	3
35–39	4	11	22	12	4	14	5	4	5	5
40–44	5	10	18	10	1	3	3	5	3	10
45–49	5	8	11	7	2	5	5	2	5	5
50–54	3	4	8	3	1	4	1	2	4	5
55–59	2	6	11	6	1	2	2	2	3	0
60–64	1	1	4	3	0	0	1	1	2	3
65 or older	0	1	0	2	0	0	0	0	0	1

4.0 Workers with Reopened and Repeat Claims

4.1 Male

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	3,233	1,999	1,293	1,099	688	1,612	911	556	450	235

4.1.2 Age at Date of Reopening

Unknown	0	0	0	0	0	0	0	0	0	0
Less than 20	30	6	7	2	0	4	1	2	0	1
20–24	205	69	36	27	15	33	15	5	4	3
25–29	437	145	95	59	28	76	42	17	17	9
30–34	557	234	182	144	78	182	82	35	30	16
35–39	516	266	187	155	106	188	134	74	48	45
40–44	459	278	204	149	83	247	116	79	65	34
45–49	364	253	163	148	90	257	139	85	61	29
50–54	291	241	158	145	80	216	120	78	66	35
55–59	195	198	123	110	43	175	105	62	49	29
60–64	118	175	71	84	38	115	76	48	36	17
65 or older	61	134	67	76	127	119	81	71	74	17

4.2 Female

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	925	628	404	333	184	264	173	121	94	73

4.2.2 Age at Date of Reopening

Unknown	0	0	0	0	0	0	0	0	0	0
Less than 20	12	4	2	1	0	0	2	0	0	1
20–24	66	34	20	13	6	9	5	3	3	1
25–29	145	88	49	43	19	12	7	5	5	2
30–34	142	110	67	65	20	34	24	17	8	1
35–39	151	100	69	60	29	37	34	26	17	14
40–44	154	93	69	41	37	41	32	27	20	22
45–49	108	84	65	41	30	49	23	14	21	14
50–54	74	69	32	35	24	43	19	12	9	12
55–59	48	28	22	23	11	22	16	10	4	2
60–64	20	15	9	9	7	16	9	5	6	1
65 or older	5	3	0	2	1	1	2	2	1	3

4.3 Unknown Gender

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	0	0	0	1	0	0	0	0	0	0

4.3.2 Age at Date of Reopening

Unknown	0	0	0	0	0	0	0	0	0	0
Less than 20	0	0	0	0	0	0	0	0	0	0
20–24	0	0	0	0	0	0	0	0	0	0
25–29	0	0	0	0	0	0	0	0	0	0
30–34	0	0	0	1	0	0	0	0	0	0
35–39	0	0	0	0	0	0	0	0	0	0
40–44	0	0	0	0	0	0	0	0	0	0
45–49	0	0	0	0	0	0	0	0	0	0
50–54	0	0	0	0	0	0	0	0	0	0
55–59	0	0	0	0	0	0	0	0	0	0
60–64	0	0	0	0	0	0	0	0	0	0
65 or older	0	0	0	0	0	0	0	0	0	0
	4,158	2,627	1,697	1,433	872	1,876	1,084	677	544	308

5.0 Claims Regional Profile

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874

5.1 Halifax County

No Time Loss	805	804	660	260	574	719	620	660	1,002	1,090
Time Loss	2,287	2,453	2,865	2,868	2,326	1,827	1,735	1,556	1,941	2,286
Fatalities	3	1	1	1	1	2	0	0	0	1
Disallowed	638	695	355	413	435	394	300	277	266	216
Total for ISU	3,733	3,953	3,881	3,542	3,336	2,942	2,655	2,493	3,209	3,593
% of Total Registered	9.20%	10.41%	10.31%	9.89%	9.85%	9.59%	8.27%	7.54%	9.17%	10.30%

5.2 Halifax City

No Time Loss	706	755	682	357	730	808	632	604	665	639
Time Loss	2,104	2,276	2,451	2,628	2,096	1,710	1,640	1,565	1,270	1,247
Fatalities	2	1	2	2	0	1	1	1	1	0
Disallowed	533	565	388	353	273	311	318	275	191	169
Total for ISU	3,345	3,597	3,523	3,340	3,099	2,830	2,591	2,445	2,127	2,055
% of Total Registered	8.24%	9.47%	9.36%	9.32%	9.15%	9.23%	8.07%	7.40%	6.08%	5.89%

5.3 Central North Shore

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
No Time Loss	576	733	652	333	919	1,402	885	845	1,089	931
Time Loss	1,739	2,078	2,559	2,341	1,918	1,295	1,587	1,618	1,732	1,822
Fatalities	1	3	1	1	1	2	1	0	0	0
Disallowed	443	463	301	250	240	286	199	227	258	132
Total for ISU	2,759	3,277	3,513	2,925	3,078	2,985	2,672	2,690	3,079	2,885
% of Total Registered	6.80%	8.63%	9.34%	8.16%	9.08%	9.73%	8.33%	8.14%	8.79%	8.27%

5.4 South Shore Valley

No Time Loss	555	671	521	346	541	659	601	618	815	727
Time Loss	1,655	2,049	2,409	2,389	1,886	1,350	1,461	1,638	1,533	1,678
Fatalities	2	0	1	0	2	0	1	1	1	1
Disallowed	431	485	327	320	339	353	345	321	321	264
Total for ISU	2,643	3,205	3,258	3,055	2,768	2,362	2,408	2,578	2,670	2,670
% of Total Registered	6.51%	8.44%	8.66%	8.53%	8.17%	7.70%	7.50%	7.80%	7.63%	7.66%

5.5 Cape Breton

No Time Loss	967	817	884	2,577	3,027	2,871	3,641	3,085	3,048	2,792
Time Loss	1,805	2,094	2,054	2,378	1,765	1,295	1,332	1,334	1,384	1,451
Fatalities	2	2	0	0	3	0	1	0	0	1
Disallowed	57	30	29	39	125	232	216	227	387	193
Total for ISU	2,831	2,943	2,967	4,994	4,920	4,398	5,190	4,646	4,819	4,437
% of Total Registered	6.97%	7.75%	7.88%	13.94%	14.52%	14.34%	16.17%	14.06%	13.76%	12.72%

5.6 Other

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
No Time Loss	19,208	16,998	16,981	14,992	14,182	12,705	13,591	14,720	16,171	16,072
Time Loss	3,143	970	1,057	702	524	518	437	459	340	577
Fatalities	17	40	21	6	14	10	12	16	21	14
Disallowed	2,919	2,989	2,428	2,276	1,964	1,921	2,536	3,003	2,574	2,571
Total for ISU	25,287	20,997	20,487	17,976	16,684	15,154	16,576	18,198	19,106	19,234
% of Total Registered	62.29%	55.30%	54.44%	50.17%	49.24%	49.41%	51.65%	55.06%	54.57%	55.15%

6.0 Claims by Year Accepted

6.1 Time Loss & Fatalities

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Time Loss	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200	9,061
Deaths	27	47	26	10	21	15	16	18	23	17
Total	12,760	11,967	13,421	13,316	10,536	8,010	8,208	8,188	8,223	9,078

6.1.1 Accepted Claims by Age

Current Year	11,549	10,627	12,471	12,430	9,926	7,356	7,568	7,568	7,549	8,640
Minus 1 Year	1,105	1,218	871	839	555	619	595	580	616	384
Minus 2 Years	39	33	28	22	20	10	16	19	6	0
Minus 3+ Years	40	42	25	15	14	10	13	3	29	37
Total	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200	9,061

6.1.2 Percentage by Age

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Current Year	90.70%	89.15%	93.10%	93.42%	94.40%	92.01%	92.38%	92.63%	92.06%	95.35%
Minus 1 Year	8.68%	10.22%	6.50%	6.31%	5.28%	7.74%	7.26%	7.01%	7.51%	4.24%
Minus 2 Years	0.31%	0.28%	0.21%	0.17%	0.19%	0.13%	0.20%	0.23%	0.07%	0.00%
Minus 3+ Years	0.31%	0.35%	0.19%	0.11%	0.13%	0.13%	0.16%	0.04%	0.35%	0.41%

6.2 No Time Loss

Reported	22,817	20,778	20,380	18,865	19,973	19,164	19,970	20,532	22,790	22,251

6.2.1 Accepted Claims by Age

Current Year	12,184	9,966	10,159	10,165	11,855	12,717	12,454	12,427	11,790	15,973
Minus 1 Year	4,155	4,643	4,969	4,486	5,260	4,480	5,096	5,156	8,463	4,595
Minus 2 Years	1,109	988	1,240	1,230	1,152	825	1,307	976	807	0
Minus 3+ Years	5,369	5,181	4,012	2,984	1,706	1,142	1,113	1,973	1,730	1,683
Total	22,817	20,778	20,380	18,865	19,973	19,164	19,970	20,532	22,790	22,251

6.2.2 Percentage by Age

Current Year	53.40%	47.96%	49.85%	53.88%	59.36%	66.36%	62.36%	60.53%	51.73%	71.79%
Minus 1 Year	18.21%	22.35%	24.38%	23.78%	26.34%	23.38%	25.52%	25.11%	37.13%	20.65%
Minus 2 Years	4.86%	4.76%	6.08%	6.52%	5.77%	4.30%	6.54%	4.75%	3.54%	0.00%
Minus 3+ Years	23.53%	24.94%	19.69%	15.82%	8.54%	5.96%	5.57%	9.61%	7.59%	7.56%

7.0 Claims Costs

7.1 Costs

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Payments	117,047,394	117,693,829	119,501,340	113,300,013	104,632,089	107,445,639	90,713,616	96,315,651	112,207,228	123,958,190
Change in Benefits Liabilities*	48,335,632	39,773,882	20,634,000	(52,557,000)	37,664,000	44,907,000	77,643,000	83,722,110	66,642,881	64,457,531
Total	165,383,026	157,467,711	140,135,340	60,743,013	142,296,089	152,352,639	168,356,616	180,037,761	178,850,109	188,415,721

7.2 Claims Costs Paid by Year

Current Year's Injuries	27,994,165	26,638,990	27,391,117	24,728,439	20,183,688	13,077,500	15,340,212	15,749,155	18,520,818	22,074,406
Prior Year's Injuries	89,053,229	91,054,839	92,110,223	88,571,574	84,448,401	94,368,139	75,373,404	80,566,496	93,686,410	101,883,784
Total	117,047,394	117,693,829	119,501,340	113,300,013	104,632,089	107,445,639	90,713,616	96,315,651	112,207,228	123,958,190

7.3 Claims Costs Paid by Type

Short term disability	50,844,607	49,497,409	53,102,492	46,681,774	37,681,810	25,634,598	19,782,402	22,048,129	25,956,019	30,285,881
Long term disability	47,116,210	49,108,156	34,570,000	34,639,845	35,925,298	53,210,118	42,567,292	42,915,311	47,451,873	53,459,735
Survivors*	0	0	11,507,181	11,349,934	11,196,580	11,565,134	11,585,193	11,312,287	14,669,930	14,373,720
Healthcare	19,086,577	19,088,264	16,776,911	17,821,360	17,279,008	15,312,199	15,235,680	18,475,335	22,171,732	23,780,365
Rehabilitation*	0	0	3,544,756	2,807,100	2,549,393	1,723,590	1,543,049	1,564,589	1,957,674	2,058,489
Total	117,047,394	117,693,829	119,501,340	113,300,013	104,632,089	107,445,639	90,713,616	96,315,651	112,207,228	123,958,190

7.4 Claims Costs Charged by Type

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Short term disability	46,612,100	46,436,646	47,859,267	43,280,242	33,789,070	27,109,052	19,507,181	21,376,669	23,358,015	27,383,063
Long term disability	52,263,186	53,407,970	38,374,330	37,375,755	45,351,605	50,518,895	58,513,959	54,625,839	51,444,564	52,777,136
Survivors	0	0	11,962,819	7,045,856	6,310,241	5,133,957	5,812,079	5,194,084	5,831,247	6,022,115
Healthcare	16,924,238	16,948,685	16,187,908	16,268,167	15,797,608	13,912,872	13,115,963	13,499,833	16,098,360	18,262,716
Rehabilitation	0	0	2,540,898	2,535,823	2,547,905	2,492,226	1,277,991	1,406,788	1,586,190	1,692,708
Total	115,799,524	116,793,301	116,925,222	106,505,843	103,796,429	99,167,002	98,227,173	96,103,213	98,318,376	106,137,738

Change in benefits liability is calculated by taking the ending balance and subtracting the beginning balance.

* Survivor costs and Rehabilitation costs were not separated in 1991 and 1992.

8.0 Injury Rates

8.1 Average Injury Rate

	4.70%	4.40%	5.10%	5.00%	4.00%	3.20%	3.20%	3.10%	3.00%	3.20%

8.2 Injury Rates by Industry Sectors

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture	6.50%	5.60%	6.30%	7.00%	6.00%	5.40%	5.20%	4.80%	4.70%	3.90%
Business Service	1.10%	1.30%	1.50%	1.40%	1.80%	1.20%	0.90%	1.10%	0.80%	1.20%
Communication	2.10%	2.00%	3.00%	2.80%	2.40%	2.20%	2.10%	2.00%	2.00%	2.20%
Construction	7.70%	6.70%	7.40%	7.30%	5.70%	5.30%	4.80%	4.30%	3.60%	4.20%
Fishing and Trapping	9.00%	8.00%	8.70%	8.40%	5.30%	5.20%	4.90%	5.30%	5.00%	5.80%
Government	3.20%	3.40%	3.90%	3.60%	3.00%	3.10%	2.70%	3.00%	2.50%	2.60%
Health and Social Services	4.70%	4.60%	5.20%	5.10%	4.40%	3.40%	3.80%	3.50%	3.70%	3.60%
Accomodations, Food & Beverage	3.00%	2.60%	3.60%	3.50%	2.90%	2.60%	2.40%	2.70%	2.40%	2.90%
Logging and Forestry	13.00%	11.50%	15.60%	14.00%	10.80%	8.60%	8.60%	6.60%	7.00%	6.10%
Manufacturing	7.30%	6.80%	8.00%	7.90%	6.00%	4.70%	4.60%	4.70%	4.80%	5.00%
Mining	3.60%	4.60%	3.90%	3.40%	3.00%	2.90%	2.80%	1.90%	2.50%	2.10%
Other Services	3.10%	3.90%	4.20%	4.20%	3.70%	3.00%	2.90%	1.90%	2.70%	2.60%
Retail	2.70%	2.70%	3.30%	3.30%	2.70%	2.30%	2.20%	2.00%	2.10%	2.20%
Transportation	6.00%	6.60%	6.40%	6.40%	5.10%	4.60%	4.40%	4.30%	4.20%	4.70%
Wholesale	2.60%	2.90%	3.70%	3.10%	2.70%	2.00%	1.80%	2.00%	2.20%	2.20%
All Others	43.50%	35.30%	41.10%	41.10%	30.50%	20.70%	20.70%	14.30%	4.90%	9.40%

9.0 WCB Staff and Administration Cost

9.1 Staff

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total FTE	163	168	231	252	285	296	288	296	315	304
FTE/1000 Wage Loss Claims	12.80	14.09	17.25	18.94	27.10	37.02	35.16	36.23	38.41	33.55

9.2 WCB Administration Costs

Total Administration Costs	$9,792,723	$11,300,027	$13,340,169	$16,817,136	$17,770,181	$19,397,643	$20,743,625	$20,146,517	$22,640,245	$25,465,681
Number of Claims	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874
Cost per Claim	$241.21	$297.59	$354.52	$469.33	$524.43	$632.44	$646.38	$609.58	$646.68	$730.22
Self Insured Claims Cost	$27,373,779	$25,834,188	$25,473,143	$25,183,847	$24,860,529	$26,548,798	$22,242,601	$22,589,761	$24,101,666	$25,335,207
Self Insured Administration Cost	$2,037,366	$1,806,291	$1,781,805	$1,847,377	$1,688,687	$3,189,249	$3,956,430	$3,799,229	$3,816,058	$4,185,634
Self Insured Administration	20.80%	15.98%	13.36%	10.99%	9.50%	16.44%	19.07%	18.86%	16.86%	16.44%
Assessed Claims Costs	$88,425,745	$90,959,113	$91,452,079	$81,321,996	$78,935,900	$72,618,203	$75,984,572	$73,513,452	$74,216,710	$80,802,531
Assessed Claims Administration Cost	$7,755,357	$9,493,736	$11,558,364	$14,969,759	$16,081,494	$16,208,394	$16,787,195	$16,347,288	$18,824,187	$21,280,047
Assessed Claims Administration	79.20%	84.02%	86.64%	89.01%	90.50%	83.56%	80.93%	81.14%	83.14%	83.56%
Total Claims Costs	$115,799,524	$116,793,301	$116,925,222	$106,505,843	$103,796,429	$99,167,001	$98,227,173	$96,103,213	$98,318,376	$106,137,738
Administration as % of Claims Costs	8.46%	9.68%	11.41%	15.79%	17.12%	19.56%	21.12%	20.96%	23.03%	23.99%

9.3 WCB Administration Expenses

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Advertising & safety promotion	$52,928	$166,548	$89,317	$83,770	$40,283	$0	$0	$0	$0	$0
Amortization & depreciation	676,445	747,538	695,048	885,314	1,130,438	1,430,413	1,601,138	1,680,629	1,812,518	2,099,430
Building Operations & Maint.	236,521	251,419	391,201	408,464	598,572	714,845	640,217	753,083	819,430	1,092,595
Claimant's general expense	19,573	0	0	0	0	0	0	0	0	0
Communications	225,830	290,216	395,135	522,214	660,178	673,684	663,414	698,489	727,573	610,464
Equipment rental	491,220	547,784	505,428	436,133	537,072	712,268	685,826	14,901	20,722	28,976
Insurance	3,604	3,075	3,343	6,354	6,648	6,714	8,049	7,153	6,142	7,151
Maint. of office equipment	45,369	103,351	0	0	0	0	0	0	0	0
Miscellaneous	81,027	181,363	140,692	122,875	16,198	26,189	17,743	10,603	15,273	22,868
Printing, stationary & supplies	551,787	645,540	823,509	710,807	859,947	772,295	685,032	647,722	693,180	873,042
Professional Fees	479,448	492,484	840,889	1,417,405	1,143,526	1,074,441	1,543,439	1,490,689	1,271,608	1,297,846
Rehabilitation	512,092	679,485	330,717	0	0	0	0	0	0	0
Salaries, benefits & expenses	5,678,248	6,487,306	8,071,747	10,940,115	11,022,355	12,044,322	13,019,262	13,668,419	15,236,476	16,824,424
Services contracted	241,994	257,978	527,498	502,537	747,588	840,185	727,948	940,213	867,302	1,095,432
Staff service recognition	65,811	0	0	0	0	0	0	0	0	0
Staff severance	0	0	0	0	0	0	0	0	0	0
Taxes–municipal	181,723	151,342	145,801	145,740	145,651	166,270	169,962	196,413	166,832	178,352
Training and development	0	0	167,476	275,994	416,955	400,194	505,393	566,318	439,252	750,268
Travel and accommodations	249,103	294,598	212,368	359,414	444,770	535,823	476,202	533,779	563,937	584,833
Recovery of pension contributions	0.00	0.00	0.00	0.00	0.00	0.00	0.00	(1,061,894)	0	0
Total	$9,792,723	$11,300,027	$13,340,169	$16,817,136	$17,770,181	$19,397,643	$20,743,625	$20,146,517	$22,640,245	$25,465,681

10.0 Legislated Obligation Costs

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Occupational Health & Safety	825,000	825,000	900,000	900,000	900,000	1,312,500	1,450,000	3,987,843	3,339,535	3,994,818
Workers' Advisers' Program	0	0	0	0	0	0	0	0	0	1,302,750
Workers' Comp. Appeal Board	369,607	370,784	513,519	348,619	580,844	146,750	11,573	0	0	0
Workers' Comp. Appeals Tribunal					92,937	545,877	798,490	978,148	1,814,614	1,971,590
Total	$1,194,607	$1,195,784	$1,413,519	$1,248,619	$1,573,781	$2,005,127	$2,260,063	$4,965,991	$5,154,149	$7,269,158

11.0 Income

11.1 Assessments

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Assessable Payroll	$4,760,000,000	$4,720,000,000	$4,640,000,000	$4,623,000,000	$4,788,200,000	$4,845,000,000	$5,147,400,000	$5,386,900,000	$5,824,100,000	$6,189,800,000
Average Assessment Rate (per $100 of assessable payroll)	1.66	1.98	2.28	2.54	2.54	2.51	2.50	2.53	2.56	2.55
Average Rate ranking among Canadian WCBs (highest to low)	11	8	5	4	4	4	4	3	2	2
Class Assessment Income	$78,145,376	$87,875,443	$100,842,910	$114,432,297	$121,204,975	$121,452,567	$127,351,412	$139,556,221	$149,679,867	$160,240,872
Self Insured Employers Claims costs recovered	$27,373,779	$25,834,188	$25,473,143	$25,183,847	$24,860,529	$26,548,798	$22,242,601	$22,589,761	$24,101,666	$25,335,207
Self Insured Employers administration charges	$2,037,366	$1,806,291	$1,781,805	$1,847,377	$1,688,687	$3,189,249	$3,956,430	$3,799,229	$3,816,058	$4,185,634
Premium Adjustment Charges	$0	$0	$0	$0	$1,553,308	$1,527,589	$2,189,897	$2,006,050	$2,031,420	$1,329,752
Reporting and other penalties	$680,620	$1,043,907	$1,462,901	$1,630,520	$143,200	$379,769	$754,287	$580,902	$750,320	$1,658,913
Total	$108,237,141	$116,559,829	$129,560,759	$143,094,041	$149,450,699	$153,097,972	$156,494,627	$168,532,163	$180,379,331	$192,750,378

12.0 Fund Balance

12.1 Actuarial Assumptions

	1991*	1992*	1993*	1994	1995	1996	1997	1998	1999	2000
Real rate of return on investments	4.00%	4.00%	4.00%	4.75%	4.75%	4.04%	3.50%	3.50%	3.50%	3.50%
CPI increase	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Inflation Rate–indexing LTD and survivor benefits	3.00%	3.00%	3.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Ranking–Inflation Rate indexing LTD and survivor benefits										
Inflation Rate–indexing STD, healthcare, etc.	N/A	5.00%	5.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Inflation Rate–projected STD cash flows	N/A	5.00%	5.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%	4.00%
Inflation Rate–projected healthcare and rehab cash flows	N/A	5.50%	5.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%

king–inflation rate projected healthcare and rehab cash flows

* Net interest rate is used as opposed to "Real Rate of Return"

1994 to 1996 a different CPI factor was assumed for short term benefits than that assumed for long term. The long term rate is the one shown here.

13.0 Claims Registered by Firms

13.1 Number of Firms

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
200 or more	20	18	22	16	15	12	13	15	18	16
100 or more	52	47	46	43	45	33	36	40	43	41
50 or more	114	114	102	90	97	86	94	92	94	96
25 or more	218	205	215	213	207	198	206	196	203	221
10 or more	539	504	531	522	524	488	504	537	551	563
5 or more	1,117	1,028	1,082	1,063	1,019	946	996	886	1,083	1,089

13.2 Percentage of All firms

200 or more	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
100 or more	0.3%	0.3%	0.3%	0.3%	0.3%	0.2%	0.2%	0.3%	0.3%	0.3%
50 or more	0.7%	0.7%	0.7%	0.6%	0.7%	0.6%	0.7%	0.6%	0.6%	0.6%
25 or more	1.4%	1.3%	1.4%	1.5%	1.5%	1.4%	1.4%	1.3%	1.4%	13.9%
10 or more	3.5%	3.3%	3.5%	3.7%	3.7%	3.4%	3.5%	3.7%	3.7%	3.5%
5 or more	7.2%	6.7%	7.1%	7.6%	7.3%	6.6%	6.9%	6.0%	7.3%	6.8%

13.3 Number of New Claims Registered

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
200 or more	12,241	11,009	11,190	8,019	7,950	7,010	7,522	8,076	9,462	8,629
100 or more	16,258	15,242	14,670	11,827	12,045	9,676	10,455	11,369	12,792	12,046
50 or more	20,452	19,758	18,492	15,186	15,615	13,304	14,369	14,770	16,350	15,916
25 or more	24,204	22,958	22,351	19,513	19,317	17,065	18,228	18,448	20,138	20,114
10 or more	28,842	27,483	27,013	24,143	24,053	21,359	22,657	23,517	25,307	25,200
5 or more	32,526	30,835	30,516	27,603	27,185	24,336	25,860	25,860	28,723	28,587

13.4 Percentage of New Claims Registered

200 or more	30.2%	29.0%	29.7%	22.4%	23.5%	22.9%	23.4%	24.4%	27.0%	24.7%
100 or more	40.1%	40.1%	39.0%	33.0%	35.5%	31.5%	32.6%	34.4%	36.5%	34.5%
50 or more	50.4%	52.0%	49.1%	42.4%	46.1%	43.4%	44.8%	44.7%	46.7%	45.6%
25 or more	59.6%	60.5%	59.4%	54.5%	57.0%	55.6%	56.8%	55.8%	57.5%	57.7%
10 or more	71.0%	72.4%	71.8%	67.4%	71.0%	69.6%	70.6%	71.2%	72.3%	72.3%
5 or more	80.1%	81.2%	81.1%	77.0%	80.2%	79.3%	80.6%	78.2%	82.0%	82.0%

14.0 Duration Of Claims

14.1 Average by Industry Group

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
	9.71	11.37	10.28	10.87	13.66	15.72	11.92	10.87	12.69	14.60
Accommodation/Food/Beverages	7.19	7.20	5.97	5.41	6.55	8.32	6.25	5.91	5.63	6.86
Agriculture	8.96	9.40	8.76	7.42	13.91	7.97	10.05	8.07	10.30	17.36
Business service	7.87	9.47	5.31	13.82	9.69	11.85	5.41	3.43	14.80	8.03
Communication	8.12	7.70	6.58	8.68	10.58	11.10	7.65	7.57	9.70	10.22
Construction	10.88	17.05	16.95	20.08	25.50	27.24	20.07	20.31	20.64	23.13
Educational Services	12.57	6.95	3.32	7.23	2.16	11.35	3.64	4.29	13.48	4.53
Finance/Insurance	23.20	21.58	7.20	53.83	16.73	30.25	26.33	27.07	0.00	32.23
Fishing & trapping	13.86	14.87	16.27	27.39	38.98	29.18	46.04	20.52	17.81	31.66
Government	8.35	10.65	8.26	7.71	10.98	12.59	11.20	9.63	13.41	14.36
Health & social services	11.49	12.07	14.73	10.11	11.36	13.83	8.75	8.54	10.13	11.84
Logging & forestry	13.98	21.15	14.07	20.34	19.64	28.60	18.31	26.86	21.46	42.31
Manufacturing	8.68	10.41	8.35	9.84	12.76	14.70	11.89	9.62	11.03	12.83
Mining	13.12	13.04	11.83	9.73	17.75	33.13	20.97	29.46	33.01	46.90
Other services	10.76	12.41	10.37	8.13	8.79	10.15	13.24	10.40	9.19	10.17
Real Estate	6.78	11.63	4.71	13.24	11.69	7.77	8.67	7.93	4.89	9.62
Retail	7.75	7.82	6.21	9.12	10.32	10.67	7.20	7.69	11.67	12.26
Transportation	10.04	11.80	12.66	12.02	15.58	16.39	12.68	10.92	16.35	15.81
Wholesale	7.47	6.47	7.11	9.33	9.14	12.35	6.66	8.47	10.21	9.33

** Duration is expressed as compensable weeks and is based on duration as at the date the claim is ended.

15.0 Assessable Payroll by Industry Group

15.1 Assessable Payroll

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture/Related Services	47,720,687	42,170,682	42,063,003	40,677,562	42,073,193	40,635,421	39,151,317	37,187,693	37,022,739	40,219,782
Business Service	106,609,017	106,340,005	106,837,436	103,212,472	100,941,137	104,725,935	116,244,612	136,495,817	170,853,449	199,177,524
Communication	287,893,339	276,118,973	278,067,046	262,356,667	266,439,159	251,910,765	246,997,949	244,031,639	256,426,714	263,122,717
Construction	446,087,070	418,711,923	379,402,178	374,289,326	393,782,149	390,207,789	444,295,823	474,495,048	630,345,101	574,463,945
Fishing and Trapping	112,400,525	115,594,954	104,366,371	98,222,869	96,113,349	93,079,335	93,594,748	101,312,449	112,159,855	141,280,448
Government Services	362,043,319	371,193,797	370,213,093	383,398,548	394,835,084	379,699,922	374,026,085	351,964,022	350,537,583	353,854,528
Health and Social Services	594,300,160	610,156,710	623,737,320	623,342,615	626,828,625	636,797,107	755,330,348	796,850,291	877,446,729	946,195,735
Accommodation, Food & Beverage	230,041,009	227,858,683	227,897,234	232,834,152	250,472,520	258,774,600	269,883,315	283,663,023	307,980,297	329,678,797
Logging and Forestry	40,219,641	38,928,010	38,493,497	40,891,797	42,599,892	42,374,738	43,981,101	44,302,011	44,468,985	48,294,239
Manufacturing	987,332,183	956,671,683	918,472,168	894,355,407	977,023,444	1,008,689,209	1,045,698,951	1,103,930,433	1,134,723,597	1,194,931,117
Mining	68,653,327	63,540,776	60,794,649	54,395,582	58,768,148	61,277,028	65,687,079	71,884,819	88,733,933	87,751,739
Other Services	135,269,789	138,161,781	131,784,634	146,730,202	147,058,731	163,576,834	171,567,682	180,118,065	190,971,441	218,356,581
Retail	676,991,291	675,097,587	673,040,288	682,118,190	692,315,828	706,888,019	724,679,550	738,988,482	755,147,755	823,022,180
Transportation	257,586,302	258,638,478	251,248,077	257,130,292	271,427,017	277,430,589	290,191,258	280,972,706	302,940,391	334,692,615
Wholesale	319,973,514	324,397,999	327,925,149	328,050,391	342,223,792	340,729,373	364,355,639	427,748,634	446,910,222	506,328,690
All Other	86,878,827	96,417,959	105,657,857	100,993,928	85,297,932	88,203,336	101,714,543	112,954,868	117,431,209	128,429,363
Total	$4,760,000,000	$4,720,000,000	$4,640,000,000	$4,623,000,000	$4,788,200,000	$4,845,000,000	$5,147,400,000	$5,386,900,000	$5,824,100,000	$6,189,800,000

15.2 Percentage of Total Payroll

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture/Related Services	1.00%	0.89%	0.91%	0.88%	0.88%	0.84%	0.76%	0.69%	0.64%	0.65%
Business Service	2.24%	2.25%	2.30%	2.23%	2.11%	2.16%	2.26%	2.53%	2.93%	3.22%
Communication	6.05%	5.85%	5.99%	5.68%	5.56%	5.20%	4.80%	4.53%	4.40%	4.25%
Construction	9.37%	8.87%	8.18%	8.01%	8.22%	8.05%	8.63%	8.81%	10.82%	9.28%
Fishing and Trapping	2.36%	2.45%	2.25%	2.12%	2.01%	1.92%	1.82%	1.88%	1.93%	2.28%
Government Services	7.61%	7.86%	7.98%	8.29%	8.25%	7.84%	7.27%	6.53%	6.02%	5.72%
Health and Social Services	12.49%	12.93%	13.44%	13.48%	13.09%	13.14%	14.67%	14.79%	15.07%	15.29%
Accommodation, Food & Beverage	4.83%	4.83%	4.91%	5.04%	5.23%	5.34%	5.24%	5.27%	5.29%	5.33%
Logging and Forestry	0.84%	0.82%	0.83%	0.88%	0.89%	0.87%	0.85%	0.82%	0.76%	0.78%
Manufacturing	20.74%	20.27%	19.79%	19.35%	20.40%	20.82%	20.32%	20.49%	19.48%	19.30%
Mining	1.44%	1.35%	1.31%	1.18%	1.23%	1.26%	1.28%	1.33%	1.52%	1.42%
Other Services	2.84%	2.93%	2.84%	3.17%	3.07%	3.38%	3.33%	3.34%	3.28%	3.53%
Retail	14.22%	14.30%	14.51%	14.75%	14.46%	14.59%	14.08%	13.72%	12.97%	13.30%
Transportation	5.41%	5.48%	5.41%	5.56%	5.67%	5.73%	5.64%	5.22%	5.20%	5.41%
Wholesale	6.72%	6.87%	7.07%	7.01%	7.15%	7.03%	7.08%	7.94%	7.67%	8.18%
All Other	1.83%	2.04%	2.28%	2.18%	1.78%	1.82%	1.98%	2.01%	2.02%	2.07%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

16.0 Claims by Industry Group

16.1 Number of Claims Registered

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture/Related Services	414	349	346	352	365	369	308	309	326	302
Business Service	252	254	305	293	274	265	307	328	350	434
Communication	715	659	701	674	695	596	571	557	619	615
Construction	4,302	3,923	3,563	3,244	3,144	2,670	3,167	2,883	3,216	3,081
Fishing and Trapping	679	674	603	526	413	405	375	411	488	595
Government Services	1,478	1,515	1,600	1,595	1,363	1,378	1,286	1,218	1,140	1,089
Health and Social Services	4,872	5,165	5,186	4,614	4,308	3,439	4,341	5,193	5,199	4,855
Accommodation, Food & Beverage	1,892	1,822	2,044	2,003	1,911	2,021	1,943	2,237	2,441	2,640
Logging and Forestry	564	476	617	601	543	431	439	325	328	333
Manufacturing	9,186	8,176	8,176	8,042	8,390	7,388	7,335	7,701	8,212	7,931
Mining	385	354	278	200	230	214	180	265	259	238
Other Services	962	982	1,016	1,117	1,036	992	1,018	920	1,040	1,074
Retail	3,902	3,502	3,779	3,772	3,444	3,485	3,430	3,556	3,498	3,534
Transportation	1,698	1,722	1,595	1,566	1,528	1,324	1,472	1,337	1,328	1,424
Wholesale	1,196	1,239	1,466	1,340	1,334	1,149	1,309	1,486	1,733	1,845
All Others/Unknown	8,101	7,160	6,354	5,893	4,907	4,545	4,611	4,324	4,833	4,884
Total	40,598	37,972	37,629	35,832	33,885	30,671	32,092	33,050	35,010	34,874

16.2 Percentage of Registered Claims

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture/Related Services	1.02%	0.92%	0.92%	0.98%	1.08%	1.20%	0.96%	0.93%	0.93%	0.87%
Business Service	0.62%	0.67%	0.81%	0.82%	0.81%	0.86%	0.96%	0.99%	1.00%	1.24%
Communication	1.76%	1.74%	1.86%	1.88%	2.05%	1.94%	1.78%	1.69%	1.77%	1.76%
Construction	10.60%	10.33%	9.47%	9.05%	9.28%	8.71%	9.87%	8.72%	9.19%	8.83%
Fishing and Trapping	1.67%	1.77%	1.60%	1.47%	1.22%	1.32%	1.17%	1.24%	1.39%	1.71%
Government Services	3.64%	3.99%	4.25%	4.45%	4.02%	4.49%	4.01%	3.69%	3.26%	3.12%
Health and Social Services	0.12%	13.60%	13.78%	12.88%	12.71%	11.21%	13.53%	15.71%	14.85%	13.92%
Accommodation, Food & Beverage	4.66%	4.80%	5.43%	5.59%	5.64%	6.59%	6.05%	6.77%	6.97%	7.57%
Logging and Forestry	1.39%	1.25%	1.64%	1.68%	1.60%	1.41%	1.37%	0.98%	0.94%	0.95%
Manufacturing	22.63%	21.53%	21.73%	22.44%	24.76%	24.09%	22.86%	23.30%	23.46%	22.74%
Mining	0.95%	0.93%	0.74%	0.56%	0.68%	0.70%	0.56%	0.[illegible]%	0.74%	0.68%
Other Services	2.37%	2.59%	2.70%	3.12%	3.06%	3.23%	3.17%	2.78%	2.97%	3.08%
Retail	9.61%	9.22%	10.04%	10.53%	10.16%	11.36%	10.69%	10.76%	9.99%	10.13%
Transportation	4.18%	4.53%	4.24%	4.37%	4.51%	4.32%	4.59%	4.05%	3.79%	4.08%
Wholesale	2.95%	3.26%	3.90%	3.74%	3.94%	3.75%	4.08%	4.50%	4.95%	5.29%
All Others/Unknown	19.95%	18.86%	16.89%	16.45%	14.48%	14.82%	14.37%	13.08%	13.80%	14.01%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

16.3 Number of Compensable Time Lost Claims

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Agriculture/Related Services	176	133	157	180	136	121	107	105	96	79
Business Service	81	82	99	76	99	66	67	91	78	116
Communication	226	199	290	284	244	181	173	159	168	179
Construction	1,388	1,185	1,192	1,170	923	732	761	731	834	850
Fishing and Trapping	365	343	312	282	169	155	138	169	177	231
Government Services	477	507	573	581	468	407	345	358	298	285
Health and Social Services	1,445	1,432	1,626	1,632	1,321	1,038	1,325	1,335	1,464	1,444
Accommodation, Food and Beverage	596	533	719	726	618	531	514	585	596	724
Logging and Forestry	261	225	317	304	237	165	177	130	136	119
Manufacturing	3,229	2,877	3,220	3,095	2,508	1,756	1,772	1,905	2,033	2,219
Mining	75	87	71	54	50	48	49	36	59	50
Other Services	255	314	349	366	332	259	250	194	260	284
Retail	1,076	1,038	1,267	1,317	1,035	846	860	814	844	933
Transportation	622	676	626	656	543	457	456	417	434	509
Wholesale	401	453	562	480	413	296	301	365	432	465
All Others/Unknown	2,060	1,836	2,015	2,103	1,419	937	897	776	291	574
Total	12,733	11,920	13,395	13,306	10,515	7,995	8,192	8,170	8,200	9,061

Appendix J
Internal and External Appeals

WCAT Decision Issues by Year – Detail (Worker Initiated)

Worker Initiated: Recognition of Claim	1996	1997	1998	1999	2000	Total
1 C. Recognition of claim	9	59	185	365	280	898

Worker Initiated: New/Additional Temporary Benefits						
1 Add Temp. Earn. Replace. Benefit	0	0	79	240	286	605
2 Application of S.37 of the act	2	9	1	0	0	12
3 Add. Temp. Total Disability (TTD)	4	141	204	67	44	460
4 New TTD	3	55	78	83	6	225
5 Temp. Partial Disability	2	11	16	12	0	41
6 New Temp Earn. Replace. Benefits	0	0	75	192	167	434
Total Decisions	**11**	**216**	**453**	**594**	**503**	**1777**

Worker Initiated: New/Increased Benefits for Permanent Impairment						
1 Application of S45 of the act	5	11	0	1	0	17
2 Perm. Impairment Increase	1	46	270	316	273	906
3 Perm. Medical Assessment	3	98	276	428	192	997
4 Perm. Total Disability	0	0	2	1	0	3
5 Failure to apply PMI guideline	1	1	0	0	0	2
6 HO erred in assigning PMI%	0	0	0	0	0	0
7 Permanent Impairment Benefit	1	14	22	39	26	102
8 Permanent Impairment Benefit Varian.	0	1	11	33	30	75
9 Permanent Med. Imp. Guidelines	10	10	1	0	0	21
10 Req PMI Exam	2	4	24	45	69	144
Total Decisions	**23**	**185**	**606**	**863**	**590**	**2267**

Worker Initiated: Medical Aid (Expenses)	1996	1997	1998	1999	2000	Total
1 Application of S.71 of the act	0	0	0	0	0	0
2 Canadian Back Institute	0	0	1	1	1	3
3 Medical Aid Appliance	0	5	20	12	6	43
4 Medical Aid Clothing	0	2	1	2	2	7
5 Medical Aid Drugs	0	3	7	9	11	30
6 Medical Aid Glasses	0	0	0	0	0	0
7 Medical Aid Hearing Aid	0	1	8	15	6	30
8 Medical Aid Miscellaneous	2	32	76	188	176	474
9 Physiotherapy	0	10	31	27	28	96
10 Surgery	1	3	12	2	12	30
11 Work Hardening Program	0	1	3	2	0	6
12 Pain Clinic Treatment	0	0	5	4	1	10
Total Decisions	**3**	**57**	**164**	**262**	**243**	**729**

Worker Initiated: New/Additional Vocational Rehabilitation						
1 Application of S83 of the act	2	4	0	0	0	6
2 Add Voc. Rehab	0	7	27	47	27	108
3 Voc. Rehab. Referral	3	20	44	69	26	162
4 Criteria Extend Voc. Rehab. Ben	1	1	0	0	0	2
Total Decisions	**6**	**32**	**71**	**116**	**53**	**278**

Worker Initiated: New/Additional Extended Earnings Replacement Benefits (incl. Estimated earnings capacity)	1996	1997	1998	1999	2000	Total
1 Earnings Loss Review	0	0	0	0	1	1
2 Estimated Potential Earnings	0	0	0	8	13	21
3 Extended Earn. Repla. Bene Variance	0	0	2	9	21	32
4 Extended Earn. Replace. Benefit	0	1	12	82	128	223
Total Decisions	**0**	**1**	**14**	**99**	**163**	**277**
Worker Initiated: New Evidence?						
1 New Evidence Reconsideration	0	0	0	9	66	75
Worker Initiated: Wage Rate/Other Calculation Issues						
1 Wage Adjustment	0	0	0	3	26	29
Worker Initiated: Survivor Benefits						
1 Survivors Benefits	0	3	16	30	32	81
Worker initiated: Chronic Pain						
1 App. Function. Restoration Prgm.	2	1	1	0	0	4
2 Chronic Pain Syndrome	1	0	5	113	57	176
3 Compensability of Chronic Pain	9	0	1	0	1	11
4 Erred in finding Chronic Pain	1	0	0	0	2	3
5 Error in Finding Chronic Pain	0	0	0	0	0	0
Total Decisions	**13**	**1**	**7**	**113**	**60**	**194**

Worker initiated: Environmental Illness	**1996**	**1997**	**1998**	**1999**	**2000**	**Total**
1 Environmental Illness	1	1	14	56	78	150
2 Compensability Env. Illness	1	0	0	0	0	1
3 Medical Science Certainty EIS	1	0	0	0	0	1
Total Decisions	**3**	**1**	**14**	**56**	**78**	**152**

Worker Initiated: Occupational Disease						
1 Application of Section 84	1	0	0	0	0	1
2 Industrial Disease	0	0	1	6	2	9
3 Industrial Hearing Loss	1	0	6	3	0	10
4 Interpretation & App S.12	0	1	0	0	0	1
5 Occupational Disease Claim	0	1	13	7	17	38
6 Recognize occupational disease	1	1	0	0	0	2
Total Decisions	**3**	**3**	**20**	**16**	**19**	**61**

Worker Initiated: All Other Issues	1996	1997	1998	1999	2000	Total
1 Temp Partial Impair. Inc.	0	0	1	0	0	1
2 Quest. Apportioment of PMI%	1	0	1	0	1	3
3 Hoincorr app. amen inearlosspol	0	1	0	0	0	1
4 Commutation of Pension	0	1	2	1	8	12
5 Supplementary Benefits Program	0	0	1	6	4	11
6 Charter of Rights	0	0	0	0	2	2
7 Collateral Benefits	0	0	0	0	4	4
8 Appeal of Board Policy	7	3	0	0	0	10
9 Extension Limitation Periods	0	0	0	0	1	1
10 Not new injury- reoccurance	1	0	4	7	4	16
11 Third Party Claim	0	0	0	0	2	2
12 Worker App Employer Breach	0	0	0	0	1	1
Total Decisions	**9**	**5**	**9**	**14**	**27**	**64**

WCAT Decision Issues by Year – Detail (Employer Initiated)

Employer Initiated: Acceptance of Claim	**1996**	**1997**	**1998**	**1999**	**2000**	**Total**
1 Employer Appeal of Acceptance				8	6	14
2 Recognition of Claim		1		9	2	12
	0	**1**	**0**	**17**	**8**	**26**

Employer Initiated: Extent Of Benefits						
1 Add Temp Earn Replace Benefit				1		1
2 Add. Voc Rehab			1			1
3 Medical Aid Miscellaneous				2		2
4 New Ttd				1		1
5 Perm. Medical Assessment				1		1
6 Physiotherapy				1		1
7 New Temp Earn Replace Benefits				6	1	7
	0	**0**	**1**	**12**	**1**	**14**

Employer Initiated: Assessment Classification						
1 A. Classification				6	4	10
2 A. Discrimination In Class					1	1
3 Entitlement Muliti Classificat				4		4
4 Assessed Wrong Firm No					1	1
	0	**0**	**0**	**10**	**6**	**16**

	Employer Initiated: Assessment Penalties	1996	1997	1998	1999	2000	Total
1	Employer Appealing Penalty				10	10	20
	Employer Initiated: Other Claims Issues						
1	Employer Appeal Breach					2	2
	Employer Initiated: Other Assessment Issues						
1	Entitle To Subdiv. Of Class				1	2	3
2	Emp. Mandatory Coverage				4	2	6
3	Prev. Firm Assessment Costs				1		1
4	Entitle To O/P Of Assessment		1		2	2	5
5	Proper Rating		1		3		4
6	Employ App Elig/App/Suit Dec					1	1
7	Experience Rating Issue					3	3
		0	**2**	**0**	**11**	**7**	**20**

WCAT Appeals by Outcome 2000 Calendar Year

Oral Hearings by Outcome 2000	ACC/AAP	DEN	Resolved by Other Means	Total
December	4	4	0	8
November	8	5	1	14
October	15	10	3	28
September	20	5	0	25
August	42	9	1	52
July	24	10	2	36
June	21	13	2	36
May	32	16	1	49
April	20	5	1	26
March	13	3	0	16
February	11	11	12	34
January	17	4	1	22
Totals by Outcome	227	95	24	346

Paper Review by Outcome 2000	ACC/AAP	DEN	Resolved by Other Means	Total
December	7	15	1	23
November	23	37	1	61
October	54	70	15	139
September	60	59	7	126
August	48	37	5	90
July	29	40	2	71
June	36	34	5	75
May	49	41	5	95
April	59	72	7	138
March	96	85	22	203
February	56	59	69	184
January	76	66	11	153
Totals by Outcome	593	615	150	1,358

WCAT Appeals by Outcome 2000 Calendar Year (continued)

Appeals by Outcome 2000	ACC/AAP	DEN	Resolved by Other Means	Total
December	11	19	1	31
November	31	42	2	75
October	69	80	18	167
September	80	64	7	151
August	90	46	6	142
July	53	50	4	107
June	57	47	7	111
May	81	57	6	144
April	79	77	8	164
March	109	88	22	219
February	67	70	81	218
January	93	70	12	175
Totals by Outcome	820	710	174	1,704

WCAT Appeals by Outcome 2001 Calendar Year

Oral Hearings by Outcome 2001	ACC/AAP	DEN	Resolved by Other Means	Total
December	9	15	0	24
November	23	7	1	31
October	17	8	0	25
September	13	4	0	17
August	4	5	0	9
July	6	1	0	7
June	0	0	0	0
May	8	2	0	10
April	7	7	0	14
March	15	20	2	37
February	8	8	0	16
January	7	11	0	18
Totals by Outcome	117	88	3	208

Paper Review by Outcome 2001	ACC/AAP	DEN	Resolved by Other Means	Total
December	18	28	4	50
November	28	27	3	58
October	14	22	0	36
September	18	18	0	36
August	19	28	3	50
July	14	17	1	32
June	33	26	4	63
May	27	28	1	56
April	13	25	3	41
March	23	65	5	93
February	17	100	5	122
January	9	24	1	34
Totals by Outcome	233	408	30	671

WCAT Appeals by Outcome 2001 Calendar Year (continued)

Appeals by Outcome 2001	**ACC/AAP**	**DEN**	**Resolved by Other Means**	**Total**
December	27	40	4	71
November	51	34	4	89
October	31	30	0	61
September	31	22	0	53
August	23	33	3	59
July	20	18	1	39
June	33	26	4	63
May	35	30	1	66
April	20	32	3	55
March	38	85	7	130
February	25	108	5	138
January	16	35	1	52
Totals by Outcome	350	493	33	876

WCAT Average Days to Appeal Decision

(from the date the appeal was received and month indicating the month the decision was issued)

* does not include mediated settlements and excludes the Leave to Appeal stage

	1996		1997		1998		1999		2000	
	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision	Oral Hearing Decision	Paper Review Decision
Jan	0	0	444	1149.25	535.5	756.20	854.25	735.55	661.68	603.93
Feb	0	0	574.86	762	0	721.29	885	835.23	934.18	855.57
Mar	0	0	512.71	579.70	1852	904.06	660.29	615.13	645.88	621.53
Apr	0	0	409	454.33	758.20	787.42	784.57	779.88	656.08	559.97
May	0	0	0	0	1040	901.25	849	854.710	604.65	455.68
Jun	0	0	0	271	843.20	707.04	1070.90	1014.48	625.89	367.46
Jul	0	0	727	847	766.5	889.16	826.19	984.91	766.63	631.44
Aug	0	0	374	630.5	385	878.14	887.88	862.90	772.62	856.88
Sep	0	0	528	623	0	742.92	802.17	735.90	592.54	1123.25
Oct	379.33	0	640.67	619.17	912.80	787.54	682.60	628.39	471.59	611.73
Nov	438.5	564.67	495.5	653.64	798.40	711.82	811.26	661.15	206.77	139.62
Dec	406.5	1277	564	665.47	855.13	514.08	633.58	598.35	180	149.30

All Current Appeals Pending before WCAT as of July 31, 2001

Worker Initiated Appeals Pending	Total
1 Worker Initiated: Recognition of Claim	46
2 Worker Initiated: New/Additional Temporary Benefits	122
3 Worker Initiated: New/Increased Benefits for Permanent Impairment	121
4 Worker Initiated: Medical Aid (expenses)	100
5 Worker Initiated: New/Additional Vocational Rehabilitation	4
6 Worker Initiated: New/Additional Extended Earnings Repl. Benefits (incl. Estimated earnings capacity)	28
7 Worker Initiated: New Evidence	0
8 Worker Initiated: Wage Rate/Other Calculation Issue	2
9 Worker Initiated: Survivor Benefits	3
10 Worker Initiated: Chronic Pain	4
11 Worker Initiated: Environmental Illness	0
12 Worker Initiated: Occupational Disease	2
13 Worker Initiated: All Other Issues	33
Subtotal by Issue Outcome	**465**

Employer Initiated Appeals Pending	**Total**
1 Employer Initiated: Acceptance of Claim	0
2 Employer Initiated: Extend of Benefits	0
3 Employer Initiated: Assessment Classification	1
4 Employer Initiated: Assessment Penalties	5
5 Employer Initiated: Other Claims Issues	0
6 Employer Initiated: Other Assessment Issues	1
Subtotal by Issue Outcome	**7**
Total of All Issue Categories (Worker/Employer Initiated)	**472**

Pending appeals: 365 (worker), 7 (employer)"

272 single issue appeals, 87 appeals with 2 issues, 6 appeals with 3 issues - worker related"

Oral Hearings Held, by Oral Hearings Requested

	No. of Oral Hearings Held	No. of Oral Hearings Requested	Percentage of Oral Hearings Granted
1996	9	14	64.29%
1997	32	99	32.32%
1998	49	250	19.60%
1999	204	803	25.40%
2000	345	1041	33.14%
All Years	**639**	**2207**	**28.95%**

*Does not include mediation decisions

* Of Final Decisions rendered in each year

Appendix K
WCB Summary of Major Benefit Changes Since 1917

This chart updates the benefit changes that the Board last published in its 1980 Annual Report.

Maximum Assessable/Insurable Earnings	
$1,200	to December 31, 1937
$1,500	effective January 1, 1938
$2,000	effective March 29, 1945
$2,500	effective May 1, 1949
$3,000	effective April 10, 1952
$3,600	effective April 1, 1959
$4,200	effective May 1, 1962
$5,000	effective May 1, 1966
$6,000	effective July 1, 1968
$7,000	effective July 1, 1971
$9,000	effective January 1, 1974
$12,000	effective January 1, 1976
$15,000	effective January 1, 1980
$19,000	effective January 1, 1982
$24,000	effective January 1, 1985
$28,000	effective January 1, 1986
$29,000	effective January 1, 1989
$36,000	effective January 1, 1990
$38,000	effective January 1, 1995
$38,600	effective January 1, 1996
$39,300	effective January 1, 1997
$39,900.	effective January 1, 1999
$40,500	effective January 1, 2000
$41,100	effective January 1, 2001

Percentage of Earnings for Computation of Compensation		
	55% gross	to December 31, 1929
(Lumbering)	55% gross	to April 30, 1930
	60% gross	effective January 1, 1930
(Lumbering)	60% gross	effective May 1, 1930
	66.2/3% gross	effective January 1, 1938
(Lumbering)	66.2/3% gross	effective May 1, 1944
	70% gross	effective April 1, 1956
	75% gross	effective April 1, 1959
	75% net (first 26 weeks) 85% net (after 26 weeks)	effective June 1, 1995

Maximum Weekly Compensation Paid		
	$12.69	to December 31, 1929
	$13.85	effective January 1, 1930
	$19.23	effective January 1, 1938
	$25.64	effective March 29, 1945
	$32.05	effective May 1, 1949
	$38.46	effective April 10, 1952
	$40.38	effective April 1, 1956
	$51.92	effective April 1, 1959
	$60.58	effective May 1, 1962
	$72.11	effective May 1, 1966
	$86.54	effective July 1, 1968
	$100.97	effective July 1, 1971
	$129.81	effective January 1, 1974
	$173.08	effective January 1, 1976
	$216.35	effective January 1, 1980
	$274.04	effective January 1, 1982
	$346.15	effective January 1, 1985
	$403.85	effective January 1, 1986
	$418.27	effective January 1, 1989

Maximum Weekly Compensation Paid (continued)		
	$519.23	effective January 1, 1990
	$548.08	effective January 1, 1995
	$383.88 (75%) $435.06 (85%)	effective June 1, 1995
	$388.98 (75%) $440.23 (85%)	effective January 1, 1996
	$388.98 (75%) $440.84 (85%)	effective January 1, 1997
	$395.09 (75%) $447.77 (85%)	effective January 1, 1998
	$400.49(75%) $453.89 (85%)	effective January 1, 1999
	$412.65 (75%) $467.67 (85%)	effective January 1, 2000
	$426.98 (75%) $483.91(85%)	effective January 1, 2001

Effective Jan. 2002, earnings replacement benefits are calculated based on Tax on Net Income.

Survivor Pension – CRS Pensions Only		
	$20.00	per month to September 30, 1920
	$30.00	per month effective October 1, 1920
	$40.00	per month effective May 1, 1943
	$50.00	per month effective May 1, 1948
	$60.00	per month effective April 1, 1959
	$75.00	per month effective May 1, 1962
	$90.00	per month effective July 1, 1965
	$100.00	per month effective July 1, 1970
	$115.00	per month effective July 1, 1971
	$225.00	per month effective January 1, 1974
	$252.00	per month effective January 1, 1975
	$273.00	per month effective January 1, 1976

Survivor Pension – CRS Pensions Only (continued)	
$284.00	per month effective January 1, 1977
$307.00	per month effective January 1, 1978
$332.00	per month effective January 1, 1979
$359.00	per month effective January 1, 1980
$395.00	per month effective January 1, 1981
$425.00	per month effective December 1, 1981
$476.00	per month effective January 1, 1982
$515.00	per month effective January 1, 1983
$536.00	per month effective January 1, 1984
$547.00	per month effective January 1, 1985
$569.00	per month effective January 1, 1986
$592.00	per month effective January 1, 1987
$616.00	per month effective January 1, 1988
$641.00	per month effective January 1, 1989
$667.00	per month effective January 1, 1990
$694.00	per month effective January 1, 1991
$722.00	per month effective January 1, 1992
$737.00	per month effective January 1, 1993
$737.00	per month effective January 1, 1994
$737.00	per month effective January 1, 1995
$737.00	per month effective January 1, 1996
$737.00	per month effective January 1, 1997
$737.00	per month effective January 1, 1998
$737.00	per month effective January 1, 1999
$743.63	per month effective January 1, 2000
$756.64	per month effective January 1, 2001

The Survivor Pension amounts listed are for CRS pensions only.

After 1996, the maximum pension payable was 85% of net earnings for life if the accident date was before 1996 and the date of death was after 1996. If the date of accident and date of death are after 1996, the maximum pension payable is 85% of net earnings to age 65.

Dependent Child Benefit	
$5.00	per month each to September 30, 1920
$7.50	per month each effective October 1, 1920
$10.00	per month each effective May 1, 1943
$12.50	per month each efftective May 1, 1949
$15.00	per month each effective April 1, 1951
$20.00	per month each effective May 1, 1953
$20.00	per month each effective April 1, 1956
$22.50	per month each effective April 1, 1959
$22.50	per month each effective May 1, 1960
$25.00	per month each effective May 1, 1962
$30.00	per month each effective July 1, 1965
$38.00	per month each effective July 1, 1970
$45.00	per month each effective January 1, 1974
$51.00	per month each effective January 1, 1975
$56.00	per month each effective January 1, 1976
$59.00	per month each effective January 1, 1977
$64.00	per month each effective January 1, 1978
$70.00	per month each effective January 1, 1979
$76.00	per month each effective January 1, 1980
$84.00	per month each effective January 1, 1981
$110.00	per month each effective December 1, 1981
$124.00	per month each effective January 1, 1982
$134.00	per month each effective January 1, 1983
$140.00	per month each effective January 1, 1984
$143.00	per month each effective January 1, 1985
$149.00	per month each effective January 1, 1986
$155.00	per month each effective January 1, 1987
$162.00	per month each effective January 1, 1988
$169.00	per month each effective January 1, 1989
$176.00*	per month each effective January 1, 1990
$184.00*	per month each effective January 1, 1991

Dependent Child Benefit (continued)	
$192.00*	per month each effective January 1, 1992
$196.00*	per month each effective January 1, 1993
$196.00*	per month each effective January 1, 1994
$196.00*	per month each effective January 1, 1995
$196.00*	per month each effective January 1, 1996
$196.00*	per month each effective January 1, 1997
$196.00*	per month each effective January 1, 1998
$196.00*	per month each effective January 1, 1999
$197.76	per month each effective January 1, 2000
$201.22	per month each effective January 1, 2001

In 1996, the *Workers' Compensation Act* set the child benefit amount at $196.00 It was impacted by CPI indexing in 2000 and 2001.

Endnotes

Chapter 1

1 Workers' Compensation Review Committee Terms of Reference, Order in Council 2001-166, March 30, 2001.

Chapter 2

1 Workers' Compensation in Nova Scotia Proposals for Reform, October 4, 1994, p. 39.

2 Resolution 844 was passed by the Nova Scotia House of Assembly on June 22, 1998.

3 Report of the Select Committee on the Workers' Compensation Act, November 27, 1998, p. 30.

4 C. MacCulloch, *Institutionalizing Failure: The Evolution of the Workers' Compensation System in Nova Scotia*, Saint Mary's University Masters Thesis, Halifax, NS, 2000.

5 Conrad Ferguson, FSA, FCIA, FLMI, Partner, Morneau Sobeco.

Chapter 3

1 For example, Temporary Workplace Traffic Control Regulations were passed in 1991. The Department of Transportation and Public Works adopted strict requirements for contracted work, and deaths of highway traffic workers have decreased significantly.

2 Report of the Workmen's Compensation Board, Halifax: King's Printer, 1918.

3 J. A. Hanway, Report of Workmen's Compensation Commission, King's Printer, Halifax, NS, 1937, p.6.

4 C. MacCulloch, *Institutionalizing Failure: The Evolution of the Worker's Compensation System in Nova Scotia*, Saint Mary's University Masters Thesis, Halifax, NS, 2000.

5 *Hayden v. Workers' Compensation Appeal Board (No. 1)* (1988), 85 N.S.R. (2d) 302 (NSCA); [1988] N.S.J. No. 185.

6 *Hawker Siddley Canada Limited v. Berry* (1977), 21 N.S.R. (2d) 41 (NSCA) at p. 45.

7 *Lewis v. Nisbet and Auld Ltd.* [1934] S.C.R. 333.

8 See *Falconer v. Workers' Compensation Appeal Board*(1990), 101 N.S.R. (2d) 176 (NSCA).

9 *Hayden v. Workers' Compensation Appeal Board (No. 2)* (1990) 96 N.S.R. (2d) 108 (NSCA) at p.114.

10 *Hayden v. Workers' Compensation Appeal Board (No. 2)* (1990) 96 N.S.R. (2d) 108 (NSCA) at p. 117.

11 *Hayden v. Workers' Compensation Appeal Board (No. 2)* (1990) 96 N.S.R. (2d) 108 (NSCA) at p.120, (from the dissenting judgment of Macdonald, J.A.).

12 Kelly Sample, *Workers' Compensation in Nova Scotia: A Legal History* (circa 1996; unpublished) at page 52. "After the creation of the Appeal Board, the level of litigation expanded rapidly. In the sixty years from 1915 to 1975, there were seven reported judicial decisions. In the twenty years from 1975 to 1995, there were *ninety-four* judicial decisions on workers' compensation." (Her emphasis added). See also Workers' Compensation Appeal Board of Nova Scotia First Status Report, November, 1994.

13 *Workers' Compensation Act*, S.N.S. 1992, c. 35, s.3.

14 *Workers' Compensation Act*, S.N.S. 1992, c.35, s.17.

15 *Workers' Compensation Act*, SNS 1992, c.35, s. 8 and s.14.

16 *Doward v. Workers' Compensation Board (NS)*(1997) 160 N.S.R. (2d) 22 (NSCA), at page 24.

17 *Ryan v. Workers' Compensation Appeals Tribunal and the Workers' Compensation Board (NS)* (1998) 168 NSR (2d) 141 (Ryan No.1).

18 WCB Policy 3.9.10, Payment of Interest on Transitional Benefits.

19 The WCB reports the transitional interest payments totalled $1,928,022 in 1997; $37,694 in 1998; $7,512 in 1999; and $1,968 in 2000.

20 WCB Policy 7.3.1, Statement of Principles, Specialized Adjudication, Amended Earnings Loss. This policy affirms the interim policy adopted by the board on November 25, 1992. See also WCB Policy 7.2.1, Recalculation of Awards Where Injury Occurred On or After March 23, 1990.

21 E-mail from the WCB dated March 12, 2002.

22 *Workers' Compensation Act*, SNS 1994-95, c. 10.

23 WCB Memo dated September 12, 2001. "Up until 1996 approximately 298 clients with injury dates prior to March 23, 1990 were receiving AIEL paymentsÖ Once the law made it clear that workers injured prior to 1990 would be ineligible for earnings-loss benefits, the WCB was required by law to move these injured workers from an AIEL award back to a CRS pension. In 1999, changes introduced in Bill 90 reinstated the AIEL benefits for this group."

24 Workers' Compensation in Nova Scotia, Proposals for Reform, A Discussion Paper, October 6, 1994 at p. 37.

25 *Workers' Compensation Act*, SNS 1994-95, c.10, s. 226. *Lowe v. Nova Scotia* (Workers Compensation Appeals Tribunal and the Workers' Compensation Board (NS)) (1998) 166 NSR (2d) 321 (NSCA).

26 Workers' Compensation Board Policy 7.3.3 approved October 4, 1995 and effective February 1, 1996.

27 Since 1999, 255 of the 298 workers who received AIEL Benefits had them restored. E-mail from the WCB dated December 18, 2001.

28 *Doward v. Workers' Compensation Board* (1997) 160 NSR (2d) 22 (NSCA).

29 *WCB (NS) v. Ryan* [2000] NSJ No. 131 (CA) (*Ryan* No.2).

30 *WCB (NS) v. Richard* (1999), 170 NSR (2d) 270 (CA); WCAT Appeal No.99-1709 (October 8, 1999) (WCAT's *Ryan* No 2.); *WCB (NS) v. Ryan* [2000] NSJ No. 131 (CA) (*Ryan* No.2).

31 In the WCB Annual Report 1999 it is noted "On July 10, 1998, the board issued a policy directive with respect to the adjudication of chronic pain related benefits. This followed a Court of Appeal decision rendered on April 17, 1997 which indicated that chronic pain coverage would be expanded for clients whose entitlement to permanent benefits arose after March 23, 1990, and prior to proclamation of the new *Workers' Compensation Act* on February 1, 1996. The 1998 adjustment amount of $40,203,000 represented the WCB's best estimate of the present value of the benefits payable…" at p.46.

32 *Workers' Compensation Act*, SNS 1994-95, c.10, s.10E..

33 Memo from the WCB dated December 5, 2001.

34 E-mail from the WCB dated February 11, 2002 indicated that at the time of the adoption of the MLDA (Marked Life Disruption Assessment) program for chronic pain, there were 800 people injured in the window period with chronic pain. (120 active cases and 680 cases in the appeal system). The WCB notes there are still 800 people eligible, but if only 529 claimants received benefits, 271 claimants are outstanding. By e-mail dated Jan. 17, 2002 the WCB indicated 541 claimants were receiving s. 10E benefits.

35 Report of the NS Select Committee on the Workers' Compensation Act, November 1998, p. 9.

36 Report of the NS Select Committee on the Workers' Compensation Act, November 1998, p. 9.

37 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.10D.

38 Workers' Compensation Appeals Tribunal Annual Report, 2000, p.11.

39 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 227 (4) and Workers' Compensation General Regulations, OIC 96-59 (January 31,1996) NS Reg 22/96 at ss. 28-33. The Program Evaluation conducted by S. Farwell and T. Vaughan in April 16, 1997 indicates that this program started on October 1, 1995.

40 *Old Age Security Act*, R.S. 1985, c.O-9.

41 WCB Annual Report 1917, p. 4.

42 *Workman's Compensation Act*, S.N.S. 1918, c.61, s.39.

43 WCB Annual Report 1992, p. 20.

44 WCB Annual Report 1992, p. 26.

45 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s.115 (2) gives the WCB authority to establish reserves.

46 *Workers' Compensation Act*, S.N.S 1973, c.6, s.5.

47 WCB Annual Report 1980, p.23.

48 WCB Annual Report 1980, p. 19

49 WCB Annual Report 1994, p. 36.

50 WCB Annual Report 1992, p. 16.

51 WCB Annual Report 1990, p.12. "Therefore, as reported to the board by its actuaries in late 1990, the total unfunded liability was approximately $180 million as at December 31, 1989."

52 WCB Annual Report 1990, pp. 10 -13.

53 Memo from the WCB on Maximum Assessable/Insurable Earnings, December 3, 2001 indicates that it increased in 1994 to $36,000. and in 1995 to $36,000.

54 WCB Annual Report 1990, p. 3.

55 WCB Annual Report 1991, p. 10.

56 WCB Annual Report 1991, p. 4.

57 WCB Annual Report 1992, p. 20.

58 WCB Annual Report 1993, p. 17.

59 1992 Report of the Auditor General, p. 153.

60 WCB Annual Report 1995, p. 14.

61 A $1 rate increased 20 per cent each year for five years will yield a $2.49 rate in the fifth year.

62 WCB Annual Report 1995, p. 37.

63 WCB Annual Report 2000, p. 39.

64 Workplace Health, Safety and Compensation Commission, News Release, October 31, 2001. http://www.gov.nb.ca/cnb/news/whscc/

65 Workers' Compensation Board, News Release, November 1, 2001.The press release notes that to help employers adjust to this move, the Alta. WCB will still use financial gains to subsidize 2002 premium rates by 13 cents per $100 of insurable earnings. The rates would have increased by 37 per cent without the WCB subsidy. http://www.wcb.ab.ca.

66 Workers' Compensation Board, News Release, November 8, 2001. http://www.wcb.mb.ca/newsnov0801.html

67 Workers' Compensation Board, Rate Book, 2002; http://www.wcb.ns.ca

68 Alberta Treasury Annual Report 2000 and 2001. Based on Dept of Finance (Can) results http://www.treas.gov.ab.ca/publications/annual_repts/treasury/annrep01/report_part3.html#40

69 Statistics provided in memo from WCB dated August 9, 2001.

70 Workers' Compensation in Nova Scotia, Proposals for Reform, A Discussion Paper. October 6,1994.

71 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10.

72 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s.275.

73 Workers' Compensation Transitional Appeal Regulations, OIC 95-411 (May 23,1995) NS Reg 76/95.

74 Workers' Compensation Appeal Backlog Regulations, OIC 96-300 (April 23, 1996) NS Reg 96/84.

75 Compendium of Workers' Compensation Appeal Board Decisions 1993-95. In the Foreward the chairperson notes that "Pursuant to an Order of the Minister of Labour, dated October 19, 1995, the Appeal Board will cease to exist on January 31, 1996."

76 Workers' Compensation in Nova Scotia, The Turning Point, October, 1988. The Ministerial Action Group noted at p.32 that the number of appeals had increased from 251 in 1976 to 606 in 1986. At that time the number of appeals allowed was approximately 80 per cent. The Auditor General noted this increased to 92 per cent. Auditor General's Report 1992, at p. 155.

77 Workers' Compensation Appeal Board of Nova Scotia, First Status Report, November 1994, p.9

78 Workers' Compensation Appeal Board of Nova Scotia, First Status Report, November 1994, p.11.

79 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s.236 (1).

80 Workers' Compensation Appeal Backlog Regulations, OIC 96-300 (April 23, 1996) NS Reg 96/84.

81 Workers' Compensation Appeal Backlog Regulations, OIC 96-300 (April 23, 1996) NS Reg 96/84. See Sections 3(1) and (2)(c), and Section 4 (2)(c).

82 Auditor General's Annual Report, 1998, c.16; Grant Thorton Report, p.17.

83 This process was later incorporated into the Alternative Dispute Resolution Regulations, OIC 1998-682 (December 18, 1998), NS Reg. 105/98.

84 WCAT Annual Report, 1997, at p.15.

85 WCAT Annual Report, 1997, at p.16.

86 WCAT Annual Report, 1997, at p.16.

87 WCAT Annual Report, 2000, at p. 25-26.

88 WCAT Annual Report, 2000, at p. 25-26 and from previous annual report statistics.

89 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s.10E.

90 The Workers' Compensation Board of Directors approved a Marked Life Disruption Policy in August of 1998, however the legislative changes introduced on November 26,1998 were more generous to those who developed chronic pain in the window period.

91 WCAT Annual Report, 2000, p.31.

92 WCB Policy 3.4.1R, *Calculation of Extended Earnings Replacement Benefit.*

93 WCB Policy 3.3.2 R1, *Permanent Impairment Rating Schedule.* The AMA 4th Edition does not address psychiatric illness, so the 2nd Edition is used for these illnesses under WCB Policy 3.3.4. Automatic Assumption illnesses are covered by WCB Policy 3.3.2 R.

94 WCB Policy 1.2.5A *Occupational Hearing Loss-Injuries on or after January 1, 2000.*

95 WCB Policy 3.3.1. *Calculation of Permanent Impairment Benefit.*

96 WCB Policy 3.4.1R, *Calculation of Extended Earnings Replacement Benefit.*

97 Hansard, Committee on Public Accounts, Wednesday, January 26, 1994 pp.1-27 and Wednesday, February 9, 1994, pp 1-31.

98 Workers Compensation Appeal Board, Decision 93-165, May 26, 1994.

99 Correspondence from Hon Jay Abbass to Dr. Robert Elgie, March 20, 1995.

100 WCB Stakeholder Discussion Paper, *Chronic Pain: Options for Discussion*, July 1995.

101 WCB Policy 2.4.1R Phase I-Pain Targeted Services, February 1, 1996.

102 *Workers' Compensation Act*, 1994-95, c.10. Functional Restoration (Multi-Faceted Pain Services) Program Regulations, O.I.C. 96-207 (March 29, 1996), N.S. Reg. 57/96.

103 Workers' Compensation Policy 2.4.1R Phase II-Multi-Faceted Pain Services, April 12, 1996.

104 *Doward v. Workers' Compensation Board (NS)*(1997) 160 N.S.R. (2d) 22 (NSCA).

105 Workers' Compensation Policy 3.4.1 Calculation of Extended Earnings Replacement Benefit, March 1, 1996

106 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 10E. See also WCB Background Paper, Chronic Pain: The Functional Restoration Program, Policies and Legislative Provisions, September, 2001, at p. 40. The WCB stopped referring workers for MLDA after April 1999 because the level of permanent medical impairment (PMI) under section 10-E was directed to be 12.5 per cent for all eligible workers.

107 Some injured workers may not have had "an appeal in the system" because they had been advised by letter from the WCB that they would be contacted about their claim. This is the subject of the appeal of Mary Kelloch to be heard by the Nova Scotia Court of Appeal in 2002.

108 *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act*, 1982; WCAT Decision 99-641-AD (Laseur); WCAT Decision 96-025-AD (Prendergast) and WCAT Decision 98-077-AD (Martin).

109 *Martin v. Workers' Compensation Board (Nova Scotia) et al* (2000), 192 D.L.R. (4th) 611 (N.S.C.A.).

110 WCB Background Paper, Chronic Pain: The Functional Restoration Program, Policies and Legislative Provisions, September, 2001, at p 42.

111 Correspondence from Chief Workers' Adviser, October 25, 2001.

112 *Workplace Safety and Insurance Act, 1997* (Ontario), S.O. 1997, c.16.

113 Brock Smith, *Chronic Pain Initiative: Report of the Chair of the Chronic Pain Panels*, August 2000, Report for the Ontario Workplace Safety and Insurance Board. AWCBC, Compensating for Chronic Pain, 2000, November, 2000.

114 *Workers' Compensation Act*, 1994-95, c.10. Functional Restoration (Multi-Faceted Pain Services) Program Regulations, O.I.C. 96-207 (March 29, 1996), N.S. Reg. 57/96 at s.7.

115 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s.10E.

116 WCB Annual Report 1998, p.39.

117 E-mail from WCB dated February 11, 2002, indicated that the analysis before the Board of Directors in July, 1998 was that there were 800 workers who had active cases (120 clients) or appeals in the system (680 clients).

118 The Committee estimates that approximately 529 window period injured workers received benefits under Bill 90. It is estimated that 271 or more injured workers did not qualify because of the November 25, 1998 cut off date included in the legislation.

119 *Lloyd v. WCB (NS) et al*, 2002 NSCA 18 and WCAT Decision 2001-349-AD (December 21, 2001).

120 *Lloyd v. WCB (NS) et al*, 2002 NSCA 18, at para. [28].

121 *Workmen's Compensation Act*, S.N.S. 1957, c. 57, s.1.

122 Report of the Auditor General 1990, p.172-174.

123 Department of Labour Annual Report, 1996, p.33.

124 Annual Report of the Auditor General, 1993, at p.167.

125 Order in Council 94-423 (May 17, 1994) appointed approximately 150 lawyers to act as Workers' Counsellors.

126 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 269.

127 Annual Report Department of Labour, March 31, 1997, at p.34. See also Annual Report Department of Labour, March 31, 1998 at p. 37. Temporary advisers appointments expired on February 6, 1998.

128 Annual Report of the NS Workers Advisers Program, November 16, 1999, at p.4.

129 *Workers' Compensation Act*, S.N.S. 1992, c.35, s.4 and s.19.

130 Report of the Select Committee on the Workers' Compensation Act, November, 1998, p.23.

131 *Bauman v. Nova Scotia (Attorney General)*, 2001 NSCA 51.

132 *Workers' Compensation Act*, S.N.S. 1999, c.1, s. 60A.

133 Government News Release, June 6, 2001, www.gov.ns.ca/news/.

134 The WCB board of directors endorsed early intervention as the underlying philosophy for policy formulation and program development in client services at a board meeting held August 16, 1993.

135 Table compiled from Annual Reports of the WCB (1991-2000). Note between 1991 to 1993 liability was restated due to actuarial changes. In the WCB Annual Report 1992 the percentage funded was listed as 30 per cent for 1991, and 29.6 per cent for 1992 (at p. 30).

136 WCB Funding Strategy 2002, (June 19, 2001) Background Section; http://www.wcb.ns.ca/.

137 WCB Funding Strategy 2002, (June 19, 2001), Appendix A.

138 Memo from Conrad Ferguson on Financial Status of the WCB, January 11, 2002.

139 WCB Funding Strategy 2002, (June 19, 2001), Appendix A.

Chapter 4

1 Final Report on Laws Relating to the Liability of Employers to Make Compensation to their Employees for Injuries Received in the Course of their Employment Which Are In Force in Other Countries, and As To How Far Such Laws are Found to Work Satisfactorily, Legislative Assembly of Ontario, Toronto, October 31, 1913, p. vii. http://www.worksafebc.com/reports/misc/meredith.asp

2 Hon. Mr. Armstrong, Debates and Proceedings (1915) at p. 89.

3 *Workmen's Compensation Act*, S.N.S. 1915, c. 1.

4 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 2 (ae). Workers Compensation General Regulations, O.I.C. 96-59 (January 31, 1996) N.S.Reg. 22/96, s. 2 and Schedule A.

5 Workers' Compensation General Regulations, OIC 96-59 (January 31, 1996) N.S.Reg. 22/96, ss. 3-6.

6 Workers' Compensation General Regulations, O.I.C. 96-59 (January 31, 1996) N.S.Reg. 22/96, ss.9-14.

7 Workers' Compensation General Regulations, O.I.C. 96-59 (January 31, 1996) N.S.Reg. 22/96, ss. 15-18

8 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 2 (ae).

9 Report of the Select Committee on Workers' Compensation, November 1998, p.26. Select Committee Report on the *Workers' Compensation Act*, 1981, p.35

10 Workers' Compensation Board Annual Report 1997, p. 26; 1998, p. 25; 1999, p.33.

11 Workers' Compensation Board Annual Report 2000, p. 21.

12 Association of Workers' Compensation Boards of Canada, Workers' Compensation Industry Classifications, Assessment Rates & Experience Rating Programs in Canada, 2001 and Internal Report 1999.

13 Figure prepared by WCB Assessment Division, December 12, 2001.

14 NS Department of Finance and NS Business Registry, 2000.

15 See Consolidated Data Table, Appendix I.

16 See Consolidated Data Table, Appendix I.

17 See Consolidated Data Table, Appendix I.

18 See Consolidated Data Table, Appendix I.

19 WCB Background Paper on Scope of Coverage, September 4, 2001, at p. 7.

20 Labour Market Information At Work in Nova Scotia, (March, 1999) at p.23. See also http://doc-depot.ednet.ns.ca/lmih.html

21 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 3.

22 Workers' Compensation General Regulations, ss. 2 - 18.

23 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 7.

24 Workers' Compensation General Regulations, s. 9(1)(c) and 6 (2).

25 Workers' Compensation General Regulations, ss. 4 - 6.

26 Workers' Compensation General Regulations, s. 8.

27 Fred Winsor, *A History of Occupational Health and Safety in Nova Scotia's Offshore Fishery 1915 - 1985*, St Mary's University (1987); C.D. Dennis Royal Commission (1927); Alexander H. McKinnon Commission (1958); Lorne O. Clarke Commission (1968).

28 See Kelly Sample, Workers' Compensation in Nova Scotia: A Legal History, p. 22-23.

29 On January 1, 2000, the WCB's Assessment Payment Plan came into effect through a partnership with Canada Customs and Revenue Agency. Workers' Compensation Board Annual Report, 2000, at p.3.

30 Workers' Compensation General Regulations, s. 15.

31 Select Committee Report, 1981, p.35.

32 Select Committee Report on the Workers' Compensation Act, 1998, 26. (See Employer-related Issues part).

33 Memo from WCB dated Dec. 19, 2001. "Many employers will only deal with firms that can provide a clearance letter stating that the employer is assessed and in good standing. When this is not possible, there are three scenarios that occur. 1. The employer is assessed and not in good standing. Under this scenario the principal may hold back the associated premium to ensure that they will not held liable for this work. 2. The employer is operating in a mandatory industry but is not required to register. Under this scenario, since there is no requirement to register, (due to size) and the employer has not voluntarily registered, there is no liability for the subcontractor and holding back is not allowed. These workers are deemed to be workers of the principal. If the employer voluntarily registers then they are treated as in Scenario 1. 3. If the contract is with an employer from a non-mandatory industry then there is no joint liability, no coverage in place, and no holdback is allowed. Employers cannot deduct from workers. To deduct from an individual, the individual must first meet our test of independence (harmonized with CCRA), and second must have voluntarily registered."

34 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 140-143.

35 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 2(ae)(xiii) and 4.

36 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 2(ae)(xii).

37 Submission to Review Committee from Jerry Duggan, CA, dated October 10, 2001

38 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 6(1).

39 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 6(4).

40 For example, a casual or substitute teacher may not be covered as teachers are exempt, even though the board may be covered for other employees (support staff, cleaning staff, etc.).

41 Workers' Compensation General Regulations, s. 9(1)(a).

42 WCB Background Paper on the Scope of Coverage under the *Workers' Compensation Act*, September 4, 2001, at p.15. "These sections (ss.17 and 18 Gen. Regs.) specify that when counting the number of workers for purposes of the 3 person rule, an active officer, director or manager of an incorporated company who is **not carried on the company payroll** (and therefore not considered a worker), as well as family members living in the employer or director's household (who are also not workers) are considered a worker for counting purposes. However, such individuals are not entitled to compensation under the act."

43 See Consolidated Data Table, Appendix I.

44 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 2 (ae) (xii). See also WCB Background Paper on Scope of Coverage (Sept. 4, 2001) at p. 18. "This section states that an employer is not considered a worker for purposes of coverage under the act. In other words an employer cannot also be a worker. Therefore an individual operating an unincorporated firm (eg. A proprietorship) is considered to be the employer…"

45 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 4.

46 Workers' *Compensation Act*, S.N.S. 1994-95, c.10, s.3 (2) and Workers' Compensation General Regulations, s. 3. In the current statute removing the words "subject to section 3 (2) " from section 4(1) would enable the board to provide voluntary coverage to persons expressly excluded.

47 Workers' Compensation General Regulations, s. 3.

48 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 2(ae)(xii) and (xiii).

49 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 37 (4).

50 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 37 (6).

51 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 102.

52 Workers' Compensation in NS: Proposals for Reform, October 1994, p.15.

53 *Workman's Compensation Act*, S.N.S. 1915, c.1.

54 PEI Bill 15, An Act to Amend the *Workers' Compensation Act*, given Royal Assent December 19, 2001 will introduce a 3/5ths waiting period that will be repaid if the injury continues after 4 weeks.

55 Study of Accident Reporting Practices and use of WHSCC Lost - Time Benefits, KPMG, 1996.

56 Workers' Compensation Board, Background Paper on Two-Fifths Waiting Period, Sept. 4, 2001, p.2. This costing assumes 3,200 claims with time loss less than the waiting period; 5,990 claims with duration greater than two days, but less than five weeks; and 15 per cent or 1,390 unreported time loss claims. It assumes an average daily cost of $58.55 and a duration between 0.5 and 2.0 days.

57 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 37 (7) and (8).

58 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended by S.N.S. 1999, c.1, s. 37 (4) and (6). Section 37 (7) and (8) were repealed.

59 Memo from Conrad Ferguson, Two-fifths Waiting Period, January 8, 2002.

60 E-mail from the WCB, Nov 5, 2001.

61 WCB Background Paper on The Two-fifth's Waiting Period, September 4, 2001, p. 2.

62 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.10A.

63 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.10B(a).

64 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.10B(b).

65 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.10B (c)

66 Early Intervention was adopted by the Worker's Compensation Board of Directors as an underlying principle for its policies on August 16, 1993. Two strategy documents were endorsed at the meeting (1) Early Intervention for Recovery and Re-employment Background Paper and (2) Early Intervention Companion Document: Vocational Rehabilitation Strategy (K. Connell, 1993).

67 Wilbert E. Fordyce, ed., Back Pain in the Workplace: International Association for the Study of Pain, 1995.

68 WCB Benefit Options Paper, November 28, 1995, p.5

69 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 10(7).

70 WCB Strategy Paper, January 10, 1996, at p.1, and Board Resolution, January 12, 1996.

71 WCB Strategy Paper, January 10, 1996, at p.1, and Board Resolution, January 12, 1996.

72 WCB Policy 2.4.2 Phase II-Multi-faceted Pain Services: Criteria. Workers' Compensation Functional Restoration (Multi-faceted Pain Services) Program Regulations (N.S. Reg. 96-207)

73 *Workers' Compensation Act*, S.N.S. 1999, c.1.

74 WCAT Decisions 99-641-AD and 98-077-AD, (the *Martin* and *Laseur* decisions).

75 WCB Background Paper on Chronic Pain (September, 2001) at p.16. These projections were based on a document entitled Methodology Costing Chronic Pain (1996).

76 Methodology Costing Chronic Pain (1996), p.9.

77 Submission of Dr. M.E. Lynch, MD, FRCPC; Dr. A.J. Clark, MD, FRCPC; Dr. I Beauprie, MD, FRCPC; Dr. P. Livingston, MD, FRCPC; Dr. K. Chisholm, MD, FRCPC dated September 20,2001.

78 WCB Background Paper on Chronic Pain, September, 2001, at p.21.

79 WCB Background Paper on Chronic Pain, September, 2001, at p.5. The board approved the continuation of the program with the administrative changes at its December 1999 Directors' Meeting.

80 Workers' Compensation Functional Restoration (Multi-faceted Pain Services) Program Regulations (N.S. Reg. 96-207), s.6.

Chapter 5

1 *Workers' Compensation Act* , S.N.S. 1994-95, c. 10, s. 134; Policy No.9 on Self-Insurance was approved by the board on June 6, 1997, but does not appear to have been issued. it appears from a WCB memo to the committee dated May 27, 2001 that the board is still dealing with a policy on self-insured employers.

2 For example, the Workers' Compensation Board of Nova Scotia's agreement with the Federal Government for administration of the *Government Employees Compensation Act*, requires the federal government to pay the board an annual administration fee that covers its total administration costs, including legislated obligations (for Workers Advisers Program and WCAT costs), less the cost of operating assessments, experience rating, and collections, bad debt expense, the cost of funding Occupational Health & Safety (as the Federal Government does this aspect through the federal Department of Labour), and the cost of administering investments.

3 The Nova Scotia Government is a self-insured employer. In 1993, it allocated $25 million as its liability as a self-insurer. Report of the Auditor General, 1993, at p.39.

4 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 114.

5 For example, the province passed an automatic assumption for entitlement for coal miners who had worked at the face of a mine for 20 years or more in 1981, and assumed the costs for the federal workers. *Workers' Compensation Act* , S.N.S. 1994-95, s. 6(3).

6 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 115; 120-1. Workers' Compensation General Regulations, OIC 96-59, (January 31, 1996) NS Reg. 22/96 as amended, ss. 1-18; ss.35-39. Workers Compensation Policies on Assessment, Chapter 9, Policy Manual.

7 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.115.

8 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.115.

9 WCB Funding Strategy 2002-2006, Key Risk Areas of Uncertainty, http://www.wcb.ns.ca/.

10 WCB Funding Strategy 2002-2006, Key Risk Areas of Uncertainty, http://www.wcb.ns.ca/.

11 WCB Funding Strategy 2002-2006, http://www.wcb.ns.ca/.

12 WCB Funding Strategy 2002-2006, http://www.wcb.ns.ca/.

13 WCB Policies 9.3.2R1 Transition; 9.4.1R1 Experience Rating Participation; Policy

9.4.2R1 Maximum Merit and Demerit.

14 WCB Background Paper, Classification of Registered Employers, 2001, at p. 8. The actuarial study was done by Sobeco, Ernst and Young, Report on the Development and Design of a Revised Assessment Model. 1994, at p.27.

15 WCB Background Paper, Classification of Registered Employers, 2001, at p. 8.

16 WCB Policy 9.2.1 Multiple Classification-Eligibility, and WCB Policy 9.2.2 Classification of Firms not Eligible for Multiple Classification.

17 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 134B.

18 For example see *Halifax Employers Association v. Workers' Compensation Appeals Tribunal (NS)*, 2000 NSCA 86.

19 WCAT and WCB statistics. See also Appeals, chapter 8.

20 Data provided by WCB, November 28, 2001.

21 The 5 year ratio of new injury cost to payroll includes SIC 9211 (Restaurants Licensed), 9212 (Restaurants Unlicensed) and 9213 (Take-out Food Services).

22 The cost index compares an individual ratio with the overall ratio for all industries. An index of 0.5 means the cost ratio is half of the overall provincial ratio.

23 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 115 (4) and (5). No directive was published under the act.

24 WCB Funding Strategy, 2002-2006, at Summary, http://www.wcb.ns.ca/.

25 E-mail from the WCB dated January 16, 2002.

26 E-mail from the WCB dated January 16, 2002.

27 WCB Policy 9.3.2R1 Transitions.

28 *Workers' Compensation Act* S.N.S. 1994-95, c. 10, s. 134(5).

29 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 134(1).

30 *Government Employees Compensation Act*, R.S.C., c. G-8, s.1.

31 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 134(3).

32 See General Employment Data, StatsCan figures on Public Sector employees in Appendix I.

33 WCB e-mail dated December 3, 2001.

34 Report of the Auditor General, 1992, at p.154. See Appendix H Self Insureds Revenue.

35 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 172(1).

36 KPMG Cost Drivers Study, 1993, at p. 21.

37 WCB Funding Strategy 2002-2006, notes under Rationale for Key Assumptions, Real Rate of Return, that declines in market values in the first quarter of 2001 indicated how quickly gains may be erased. During the first quarter the market value of the WCB's portfolio declined $26 million. See www.wcb.ns.cs/fundingstrategy2002/rationale.

38 WCB Investment Policy, approved June 2, 1995. See www.wcb.ns.ca/library.

39 WCB Background Paper, Review of Investment Portfolio at the Nova Scotia Workers' Compensation Board, May 9, 2001, at p.4.

40 *Workers' Compensation Act*, 1994-95, c. 10, s. 218; Workers' Compensation General Regulations, OIC 96-59 (January 31, 1996), NS Reg. 22/96; WCB Policies 9.5.3R Failure to Register with Board; 9.5.1R Late Submission of Payroll Statement; 9.5.2R Unpaid or Overdue Assessments.

41 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, ss.30-31. Report of the Select Committee on the Workers' Compensation Act, November, 1998, p.30.

42 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 220. WCB Policies 10.2.1R Recovery of an Overpayment; 10.2.2 Appealing an Overpayment.

43 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 6(3) is an example of where the Province indicates it will pay the assessment out of the Consolidated Fund of the Province.

44 Workers' Compensation in Nova Scotia, Proposals for Reform, October 4, 1994.

45 WCB Annual Report 1995, p. 25. Workers' Compensation in Nova Scotia, Proposals for Reform, October 4, 1994, at p 39. Report of the Select Committee on the Workers' Compensation Act, November, 1998, p.27.

46 WCB Annual Report 1996, p. 38.

47 WCB Annual Report 1997, p. 36.

48 WCB Annual Report 1997, p. 36.

Chapter 6

1 The Halifax City Police Association and Firefighters Union left the workers compensation program after the 1996 statute imposed a two day waiting period for benefits and banned employers from paying top up. The top up provisions were later removed in 1999.

2 Premier Armstrong in Hansard, Debates and Proceedings, 1915, at p.89. See also Kelly Sample, Workers' Compensation in Nova Scotia, A Legal History, p.8.

3 Example of the debate are found in Paul Weiler, Reshaping Workers's Compensation for Ontario, 1980, p.18 and in Peter Dungan, *The Effect of Workers' Compensation and Other Payroll Taxes on the Macro Economics of Canada and Ontario*, Chapter 5 of Workers' Compensation Foundations for Reform, (Gunderson and Hyatt) 2000.

4 Workers' Compensation Board Annual Report, 1994, Inside Cover. This was approved by the board of directors in March, 1995 when they approved the annual report for publication.

5 Reseach Department Inc., Workers' Compensation Board of Nova Scotia Registered Employer Study- June 1998, A Portrait of Employers' Perceptions of the WCB, Halifax, 1998, p. 3-4.

6 NS Red Tape Reduction Task Force Report, October, 2001, p.27.

7 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, ss. 28, 38 and 41.

8 NS Department of Transportation and Public Works, Requirements for Contracted Work, January 10, 2002.

9 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.29.

10 Nova Scotia Business Registry, December 31, 2000.

11 StatsCan, Nova Scotia Businesses by Number of Employees, 2000.

12 NS Occupational Health and Safety Advisory Council Report, 2001, p.15.

13 *Occupational Health and Safety Act*, S.N.S. 1996, c.7.

14 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.24.

15 The Prevention Committee Report outlining a comprehensive strategy was approved and sent to the minister, and noted in the Advisory Council's minutes of February 21, 2001.

16 *Workman's Compensation Act*, S.N.S. 1920, c. 42, s.83; Hanway Report, 1937, at p.14-15.

17 *Occupational Health and Safety Act*, S.N.S. 1985, c. 1.

18 Report of the Select Committee on the *Workers Compensation Act*, 1981.

19 Report of the Committee on Occupational Health and Safety, October 1984, p.3.

20 AWCBC Report on Legislative Comparison, 2001, at pp.31-33. These are BC, PEI, NB and Quebec.

21 *Strong Leadership, A Clear Course*, PC Caucus, 1999, p.20.

22 *Strong Leadership, A Clear Course*, PC Caucus, 1999, p.21.

23 M. Hayward, *Proposal for an Accident Prevention Unit*, Jan 28, 2000, WCB.

24 CUPE and the Nova Scotia Federation of Labour would prefer to see the current division of responsibilities remain unchanged. The CFIB and CANS made representations that the functions be combined.

25 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s. 9 (b).

26 Ian Plummer, *Review of the Occupational Health & Safety Division*, March, 1998.

27 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.115 (7).

28 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.115 (7).

29 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.162.

30 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.165.

31 1969 U.S. Ratio Study, Practical Loss Control Leadership, (Bird and Germain) 1996, p.5.

32 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 162; *Occupational Health and Safety Act*, S.N.S. 1996, c. 7, s. 10 and s. 82.

33 See Matrix of Review Topics in Chapter 1, Fig 1, p.4.

34 WCB Policy 9.4.3R.

35 WCB Policy 9.4.4R.

36 WCB Background Paper on the Two-fifths Waiting Period, September 4, 2001, at p.5.

37 WCB Policy 9.4.5.

38 WCB Policy 9.4.1R2.

39 WCB Policy 9.4.1R1.

40 *Government Employees Compensation Act*, (CAN) R.S., c.G-5.

41 Memo from Conrad Ferguson on the Two-fifths Waiting Period, January 8, 2002, at p.6.

42 See Revenue Chapter 5, at p.10.

43 WCB Background Paper, *Experience Rating System in Nova Scotia*, 2001, p.7. See WCB Policy 9.4.1R1 Experience Rating Participation. Smaller employers participate at one-third the level of larger employers.

44 The committee reviewed the top 50 Companies for claims in 2000.

45 *Delgado v. Phelps Dodge Chino, Inc.*, No.26, 360 [2001] NM-QL 123 (Supreme Court of New Mexico).

46 D. Albert, Occupational Health and Educational Services Inc., Submission to Workers' Compensation Review Committee, Sept 28, 2001.

47 Boris Kralj, *Occupational Health and Safety: Effectiveness of Economic and Regulatory Measures*, Chapter 7 of Workers' Compensation: Proposals for Reform, (Gunderson and Hyatt) 2000.

48 WCB Background Paper, *Experience Rating System in Nova Scotia*, 2001, p.3.

49 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 112.

50 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 113.

51 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 89-101.

52 WCB Policy Manual Chapter 4, Vocational Rehabilitation and Chapter 5, Reemployment.

53 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss.44-46. See also WCB Policies 9.6.1-9.6.5 on Apportionment.

54 WCB Memo on Apportionment of Claims Costs, May 17, 2001.

55 WCB Annual Report, 2000, Inside Cover.

Chapter 7

1 The figures in this chart relate to the information available at that date. Later figures are updated. On February 1, 2002 the WCB indicated that as of October 31, 2001, the year to date volumes for claims with payments made for CRS pensions was 9,120 and the survivor payments, for all types, not simply CRS claims, totaled 1168. As of December 31, 2001, these numbers had increased to 9131 CRS pensioners and 1194 survivors. The number of claims for supplementary benefits has been over 600 since 1996. In 2000, there were 639 people receiving this benefit.

2 Survivors collecting CRS pensions from pre-Hayden injuries. The deaths occurred before February 1, 1996.

3 Reflects the total number of annuities ever disbursed by the WCB.

4 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 2(r); 10G; 102 - 111; 163.

5 WCB Policy 2.1.8 Loss of Personal Items.

6 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 102.

7 Memo from the WCB dated Dec. 5, 2001. This does not include attendant allowances.

8 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 102. WCB Policy 2.1.1R Workers' Travel Expenses for Health Care.

9 E-mail from WCB dated January 11, 2002.

10 E-mail from WCB dated January 25, 2002.

11 E-mail from WCB dated January 11, 2002.

12 WCB Policy C7.2.1 Administration Policy.

13 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 60 - 68. WCB Policy 6.1.1 Death Benefit.

14 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 60 - 68. WCB Policy 6.1.2 Burial Expenses and WCB Policy 6.1.3 Expenses for Transportation of Body.

15 The survivor amounts in 1992 and 1993 were included with LTD benefits on WCB financial statements. The numbers for survivor benefits are based on the Payments by Accident Year Report. The distribution is based on the way the WCB distributes these payments now and may not be consistent with the way it reported these benefits in earlier years. The 1991 and 1992 figures are estimates of the amounts. The WCB did

not separate LTD and Survivor benefits in those years.

16 WCB Policy 7.3.14 Reinstated AIEL Benefit for pre-March 23,1990 Injuries.

17 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 50 - 59, and WCB 3.6.3 Payment at Age 65.

18 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 54(1)(b).

19 Memo from the WCB dated December 12, 2001.

20 Memo from the WCB dated December 12, 2001. See also WCB Policy 3.6.2 Annual Reporting of Amount in Annuity Accounts.

21 WCB Policy 3.6.3 Payment at Age 65.

22 Memo from the WCB dated December 12, 2001.

23 Memo from the WCB dated December 12, 2001.

24 Memo from the WCB dated December 12, 2001.

25 Memo from the WCB dated November 20, 2001 and February 28, 2002.

26 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 12(2).

27 WCAT Decision 2000-664-AD (March 15, 2001).

28 WCAT Decision 2000-639-R, (March 30, 2001).

29 E-mail from WCB dated January 9, 2002.

30 WCB Policy 3.1.1R2 Calculation of Gross Earnings.

31 Workers' Compensation in Nova Scotia, Proposals for Reform, A Discussion Paper, p. 26. The Discussion Paper recommended that the proposed Act not allow for indexing until Dec. 31,1999.

32 *Workers Compensation Act*, S.N.S. 1994-95, c.10, ss. 69-70.

33 Memo from the WCB dated December 18, 2001.

34 Memo from the WCB dated December 17, 2001.The committee confirmed this is in the correct order of magnitude.

35 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 10D;10H; 10I.

36 E-mail from the WCB dated February 1, 2002.

37 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 226.

38 *Hayden v. Workers' Compensation Appeal Board* (No. 2) (1990) 96 N.S.R. (2d) 108 (NSCA) at p. 117.

39 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 227(4).

40 Workers' Compensation General Regulations, OIC 96-59 (January 31,1996) as amended and WCB Policy 3.8.1R2 Eligibility Criteria (for Supplementary Benefits).

41 http://www.gov.ns.ca/just/regulations/regs/lscmwgen.htm.

42 S. Farwell and T. Vaughan, Program Evaluation of the NS Workers' Compensation Board-Supplementary Benefits Program, April 16, 1997, at pp. 37-8.

43 See research on http://www.gov.ns.ca/enla/wcrc/wcrcpubs.html.

44 Memo from Conrad Ferguson on Supplementary Benefits, dated January 7, 2002.

45 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 74(1).

46 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 76.

47 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 78-81.

48 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 74(2).

49 WCB Funding Strategy, 2002-2006, Rationale for Key Assumptions, http://www.wcb.ns.ca/.

50 WCB Memo dated December 20, 2001.

51 WCB Background Paper on Commutation, September 4, 2001.

52 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 74(3)(a).

53 WCB Policy 3.7.2 Commutation of CRS Pensions (for CRS pensions with PMI greater than 10%), and WCB Policy 3.9.5 Commutation of PIB and EERB (for PIB pensions with PMI greater than 30%).

54 WCB Background Paper on Commutation, Sept. 4, 2001, at p. 11.

55 For examples see WCAT Decision 99-974-AD June 30, 2000, where a 68-year old had been refused a commutation by the WCB; and WCAT Decision 99-657-AD May 29, 2000, where the PMI was 10.5% and the WCB determined that this did not qualify for commutation.

56 For example see WCAT Decision 98-552-AD February 28, 2000, where a 74-year old wished to commute to avoid high interest.

57 WCB Background Paper on Commutation, Sept. 4, 2001, at p. 16.

58 WCB Policy 3.6.4. Payment When EERB Commuted.

59 Workers' Compensation Memo on Benefit Categories (to June 30,2001) dated July 19,2001.

60 Memo from the WCB dated October 10, 2001.

61 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 74(2).

62 The WCB has a process available to establish if a business proposal is sound.

63 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 41.

64 Workers' Compensation in Nova Scotia: Proposals for Reform, October 4, 1994, p. 21.

65 Workers' Compensation General Regulations, O.I.C. 96-59 (January 31,1996) NS Reg.22/96 as amended, s.22.

66 Workers' Compensation General Regulations, O.I.C. 96-59 (January 31,1996) NS Reg.22/96 as amended, s.22.

67 Memo from the WCB dated December 3, 2001.

68 Leduc, J. SEPH Estimates are now based on North American Industrial Classification System (NAICS), Statscan, March 29, 2001.

69 WCB Background Paper on Maximum Assessable/Insurable Earnings, May 31, 2001, p.16.

70 Letter from WCB Chair dated September 25, 2001.

71 Workers' Compensation General Regulations, O.I.C. 96-695, N.S. Reg. 153/96 section 22 amended by O.I.C. 2001-612, N.S. Reg. 2/2002.

72 E-mail from the WCB dated January 29, 2002.

73 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 42(1).

74 *Workers' Compensation Act*, R.S.N.S. 1989, c. s. 45.

75 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 42(2).

76 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 48.

77 WCB Background Paper on Calculation of Earnings Replacement Benefits, September, 2001.

78 Workers' Compensation Act, S.N.S. 1994-95, c. 10, s. 42 .WCB Policy 3.1.1R2 Calculation of Gross Earnings.

79 WCB Background Paper on Calculation of Earnings Replacement Benefits, September, 2001, at pp.11-12.

80 Workers' Compensation Act, S.N.S. 1994-95, c.10, ss. 44-46. WCB Policy 9.6.2 Apportionment of Claims Costs Under Concurrent Employment; WCB Policy 9.6.4 Apportionment of Claims Costs for Learners; WCB Policy 9.6.5 Apportionment of Claims Costs for Workers Under 30.

81 WCB Memo on Workers Under 30, July 3, 2001.

82 Workers' Compensation Act, S.N.S. 1994-95, c.10, s. 39.

83 Workers' Compensation Act, S.N.S. 1994-95, c.10, s. 40.

84 Workers' Compensation Act, S.N.S. 1994-95, c.10, s. 38.

85 Workers' Compensation Board, A Discussion Paper: Calculation of Benefits under Section 45, 1993, at pp. 30-33.

86 Memo from WCB dated November 8, 2001.

87 Memo from WCB dated November 22, 2001, at p.2.

88 *Cugliari v. White et al*, 28 O.R. (3d) 641, [1998] O.J. No 1628 (Ont. C.A.).

89 Memo from the WCB, November 28, 2001.

90 Information from the WCB dated November 28, 2001.

91 AWCBC Report on Benefit Comparisons, 2001, at p.16.

92 WCB Background Paper, Calculation of Earnings-Replacement Benefits, 2001, at p.13.

93 WCB Background Paper, Calculation of Earnings-Replacement Benefits, 2001, at p.12-13.

94 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 34-36.

95 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 71.

96 WCB Background Paper, Calculation of Earnings-Replacement Benefits, 2001, at p.16.

97 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 34 and s. 74 (4). WCB Policy 3.3.1 Calculation of Permanent Impairment Benefit (PIB) and WCB Policy 3.3.2 Rating Schedule. The AMA Guidelines 4th Edition is used except for psychiatric illnesses and automatic assumption claims.

98 WCB 3.3.1 Calculation of Permanent Impairment Benefit.

99 Bill 122 passed into law and became the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 34.

100 WCB e-mail, December 14, 2001.

101 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 2(ad); 37.

102 *Workers' Compensation Act*. S.N.S. 1994-95, c.10, ss. 2(o); 75(3)-(4); 73.

103 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 73A.

104 E-mail from the WCB dated August 31, 2001.

105 WCB Policy 3.4.2R Review of Extended Earnings-Replacement Benefit.

106 E-mails from the WCB dated November 9, 2001 and January 7, 2002.

107 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 38 (b)(ii).

108 *Hayden v. Workers' Compensation Appeal Board* (No. 2) (1990) 96 N.S.R. (2d) 108 (NSCA) at p. 117.

109 See appeals data in Chapter 8, and in Appendix J.

110 *Workers' Compensation Act*, S.N.S.1994-95, c.10, s.48.

111 WCB Policy 3.9.3 Combining of Workers' Compensation Benefits.

Chapter 8

1 Paul Weiler, *Reshaping Workers' Compensation for Ontario*, 1980, p.19.

2 Submission of the Workers Advisers Program, October 17, 2001 at p.20.

3 *Workers' Compensation Act*, S.N.S. 1994-5, c. 10, s. 182. *Meechan v. Nova Scotia (Workers Compensation Appeals Tribunal)* 2001 NSCA 124.

4 *Workers' Compensation Act*, S.N.S. 1994-5, c. 10, s.187. WCB Policy 1.4.3 Weighing Conflicting Medical Evidence. WCAT Submission on the Benefit of the Doubt.

5 Memo from the WCB dated June 1, 2001, attaching the Orientation Programs and the WCB Training Modules, an example of which is The Decision-Making Process.

6 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 113. Policy 4.1.4 Vocational Rehabilitation: Non-Cooperation by Worker; Policy 4.1.6 VR: Non-Participation – Circumstances Beyond Worker's Control; Policy 3.5.1 Short-Term and Long-Term Benefits: Definition of *Suitable* Employment.

7 Currently, officers, employees, board members, the WCB and WCAT members cannot be sued if they have acted in good faith under the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 167.

8 L.T. Kohn, J.M. Corrigan, M.S.Donaldson, eds. To Err Is Human: Building a Safer Health System. Washington, DC: National Academy Press, 2000.

9 WCB Policy 3.4.2 Review of Extended Earnings-Replacement Benefit. This requires reviews at 24 and 36 months.

10 See Appeals Data Tables throughout chapter 8 and Appendix J.

11 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 85(1).

12 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 198(1)(e) and 246(1)(e).

13 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 269(2).

14 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 251.

15 WCB Training Module, *The Decision-Making Process*, p.9. *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 269(2).

16 WCB Policy 3.3.2R1 Permanent Impairment Rating Schedule and WCB Policy 3.3.4 Determining Permanent Impairment Ratings Using the Guides to the Evaluation of Permanent Impairment (AMA Guidelines).

17 E-mail from the WCB dated January 9, 2002.

18 WCB Policies (1) 2.4.7 Normal Recovery Times, (2) 2.3.4 Reimbursement for Generic Drug Substitutes, (3) 2.3.1 Provision of Health Care Services, (4) 2.2.3 Home Breathing Machines, (5) 2.2.6 Home Oxygen Therapy, (6) 2.2.7 Portable Home Oxygen Therapy, (7) 2.2.5 Pain Clinic, (8) 1.2.5R Voluntary Autopsy Reports-Deceased Pneumonoconiosis Pensioners, (9) 3.3.3R Review of Permanent Impairment Benefit, (10) 2.2.1R Spinal Fusion-Second Opinion, (11) 2.2.2 Fee Schedule, Spinal Fusion Second Opinion, (12) 2.1.6 Attendant Allowance, (13)1.2.4R Carpal Tunnel Syndrome, (14) 1.2.10 Medical Conditions from Coke Ovens Other than Lung Cancer, (15) 3.9.11 Apportionment of

Benefits, (16)1.1.3 Claims Adjudication-Processing Continuing Claims (this goes to board's doctors) (17) 2.2.4 Chemonucleolysis, (18) 2.2.8R Epidural Analgesia and Paravertebral Blocks (19) 1.2.1 Guidelines for Automatic Assumption-Injuries Prior to Jan. 1,2000, (20) 1.2.1A Guidelines for Automatic Assumption-Injuries After Jan. 1, 2000.

19 Memo from the WCB dated November 8, 2001.

20 E-mail from the WCB dated January 9, 2002.

21 WCB Policy 1.4.3 Weighing Conflicting Medical Evidence. See also WCB Policy No 8.1.7R1 Reconsiderations Pursuant to s.185 (2) Where a Final Decision of the Board Addressing an Issue Has Been Rendered.

22 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.203.

23 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.203(1)(c).

24 WCB Background Paper on the Medical Review Commission, May 18, 2001.

25 Report of the Select Committee on the Workers' Compensation Act (November, 1998) pp.19-20.

26 Annual Report of the Auditor-General, 1998, at p 188.

27 Report of the Select Committee on the Workers' Compensation Act, November 26, 1998, p.8.

28 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss.188 and 196 as amended by S.N.S. 1999, c.1, ss.22 and 23. The Select Committee on the Workers' Compensation Act, November 26, 1998, noted at p. 13 that "The committee and the Auditor General suggests eliminating the Reconsideration Process and allowing appeals to proceed directly to Hearing Officer stage. This will save the appellant as many as 100 days in their appeal." See also Annual Report of the Auditor General, 1998, at p.194.

29 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.256 (1) as amended by S.N.S. 1999, c.1, s.36.

30 WCB Background Paper on the Nova Scotia Workers' Compensation Appeal System, July 17, 2001, p.9.

31 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.186.

32 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.183 (5A) and (7).

33 *Workers' Compensation Act* S.N.S. 1994-95, c.10, ss. 199-201; 247-250. WCB Background Paper on Referrals Pursuant to Sections 197-202 and Sections 247-250, May 11, 2001.

34 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 197 and 246.

35 WCB Policy 8.1.3R1 Appeals and Referral to a Hearing Officer

36 Corporate Performance Measures, Annual Report of the Workers' Compensation Board, 2000, p.13.

37 WCB Policy 8.1.3R1 Appeals and Referrals to a Hearing Officer.

38 Memo from WCAT on Appeal Statistics dated August 10, 2001, p.6.

39 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 252A.

40 WCB Background Paper on the Nova Scotia Workers' Compensation Appeal System, July 17, 2001, at p.4.

41 WCB Background Paper on the Nova Scotia Workers' Compensation Appeal System, July 17, 2001, at p.42.

42 Submission of the Workers Advisers Program, October 17, 2001 at p.17.

43 *Metropolitan Entertainment Group v. Durnford et al.* (2000), 188 N.S.R.(2d) 318 (C.A.).

44 *Doward v. WCB*, (1997) 160 N.S.R. (2d) 22.

45 WCAT Background Paper on Review Topics 1 and 20, October 18, 2001, at p.24.

46 Report of the Select Committee on the Workers' Compensation Act, 1991, at p.49.

47 WCB Background Paper on the Nova Scotia Workers' Compensation Appeal System, July 17, 2001, at p.16. Several other reasons for two levels of appeal are captured at pp. 17 and 18.

48 *Nova Scotia (WCB) v. Nova Scotia (WCAT) and Trusz*,(1999) 173 N.S.R. (2d) 45.

49 WCB Background Paper on the Nova Scotia Workers' Compensation Appeal System, July 17, 2001, at pp. 24-25.

50 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.193 (1).

51 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.193 (4).

52 *Freedom of Information and Protection of Privacy Act*, SNS 1993, c. 5. *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.192.

53 WCB Policy 10.3.5 Access by Employers to Information Contained in Clients' Claim Files.

54 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 246(1)(b).

55 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 246(3). WCAT Decision 98-146-AD and *Doward v. WCB* (1997) 160 N.S.R. (2d) 22.

56 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 251.

57 *Cherubini Metal Works Limited v. Workers' Compensation Board (NS) et al*, 2001 NSCA 81.

58 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 240.

59 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.198 (1)(b).

60 WCB Policy 8.1.3R1 Appeals and Referrals to a Hearing Officer, s 1.3 (c) and (d).

61 WCAT Decision 98-146-AD and *Doward v.Workers' Compensation Board* (1997), 160 N.S.R. (2d) 22 at p.58.

62 Memo from the WCB dated November 23, 2001.

63 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 252(1).

64 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 251.

65 WCAT Background Paper on Terms of Reference Nos.21-24, October 17, 2001 at p.5.

66 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 252(3).

67 For authority to reconsider at common law see *Atchison v. Workers' Compensation Board*, 2001 BCSC 1661.

68 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 252(2).

69 WCAT Background Paper on Terms of Reference Nos.21-24, October 17, 2001 at p.7.

70 WCAT Background Paper on Evaluation Standards for External Appeal Level including Jurisdictional Comparison, Terms of Reference No 6, 28 and 20, November 23, 2001. Table 1.

71 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 29 and 251.

72 WCAT Background Paper on Evaluation standards for External Appeal Level including Jurisdictional Comparison, Terms of Reference No 6, 28 and 20, November 23, 2001, p.6.

73 Statistics prepared by WCB Internal Appeals and WCAT.

Chapter 9

1 Halifax Police and Firefighters Unions chose to seek private insurance after the *Workers' Compensation Act* was amended in 1996, as these changes introduced a two-day waiting period and prevented paying a top up to bring workers to full pay. The top up provisions were repealed in 1999, but the two-day waiting period remains.

2 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, ss.160, 160A, 257, 268.

3 *Government Restructuring (2001) Act*, S.N.S. 2001, c. 4.

4 All agencies prepare annual reports, monthly reports and some quarterly. See websites http://www.gov.ns.ca/wcat/; http://www.gov.ns.ca/enla/wap/; http://www.wcb.ns.ca/.

5 The WCB Policy Manual is required to be public, and is available at http://www.wcb.ns.ca/. The *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5 would enable access to policy manuals of the other agencies. WCAT Practice Directions are available at http://www.gov.ns.ca/wcat/.

6 *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5.

7 WAP Submission dated October 17, 2001; WCAT submission dated October 18, 2001.

8 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, ss. 183, 206, 256.

9 *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, ss.175, s.177, 233.

10 WCB e-mail of May 29, 2001 provided a list of all internal audit projects and program evaluations. See also list of reviews in Appendix D.

11 See review committee Website for CEO Evaluation Plan, www.gov.ns.ca/enla/wcrc/wcrcpubs.html; WCAT e-mail dated January 3, 2002, and WAP e-mail dated January 3, 2002.

12 All WCAT decisions are available through the database at the Department of Environment and Labourhttp://www.gov.ns.ca/labr/slctdb.html. For privacy reasons, initial decisions of adjudicators and hearing officers are not public.

13 The review committee received extensive orientation and training materials from each agency.

14 WCB Corporate Plan is published and available at http://www.wcb.ns.ca/.

15 Annual Report of the Auditor General, 1998, p.200.

16 Annual Report of the Auditor General, 1998, p.189.

17 WCB response to the Auditor General's comments, published in Annual Report of the Auditor General, 1998, at p. 209.

18 Annual Report of the Auditor General, 1998, p. 217.

19 Workers' Compensation Board Annual Report, 1994, Inside Cover. This was adopted by the board of directors when it approved the report for printing in 1995.

20 Memo from WCB, January 3, 2002.

21 *Workers' Compensation Act*, S.N.S. 1994-95, c.10. s.158. The board is also charged with appointing an auditor (a.175); establishing funds for annuities (s.54); approving the entering into of agreements with the Government of Canada or other WCB's (s.166); and policy review (ss.200-201).

22 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.183.

23 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 183.

24 *Workers' Compensation Act*, SNS 1994-95, c.10, s.183.

25 WCB Background Paper on Governance, August 31, 2001, p.30.

26 See for example letter from WCB re: Maximum Insurable Earnings, dated September 25, 2001, found at http://www.gov.ns.ca/enla/wcrc/wcrcsub.html.

27 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.261.

28 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.2 (t).

29 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.138A.

30 Statistics provided by the Dept. of Environment and Labour. OHS employee coverage figures based on StatsCan Employment Statistics, Class of worker, Public and Private Sector, NS. Nova Scotia deducts 55,000 as the average number of Federal Employees not covered by OHS. For employers, the StatsCan NS Establishments by NAICS Division by Employment indicates there are 49,076 employers in Nova Scotia, but certain sectors, such as financial (banks and some insurance companies), some utilities, certain transportation and other federally regulated businesses, would be covered by Federal OHS jurisdiction. For the purposes of this report, it is estimated that 1,800 employers would be federally regulated.

31 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.11

32 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.3 (s)

33 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.10. *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.155 (7).

34 *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s.24. Two members of the review committee have served on the Occupational Health and Safety Advisory Council: Carol MacCulloch and Betty Jean Sutherland.

35 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.165. Under the *Occupational Health and Safety Act*, S.N.S. 1996, c.7, s. 25 (2) the Chair of the WCB or his or her designate is a member of the Occupational Health and Safety Advisory Council.

36 See *Corporate Governance in Crown Corporations and Other Public Enterprises* (1996). For private sector principles see *Report of the Toronto Stock Exchange Committee on Corporate Governance in Canada* (1994) and David S.R. Leighton and Donald H. Thain, *Making Boards Work: What directors must do to make Canadian boards effective* (1997: Toronto, McGraw-Hill Ryerson Limited).

37 Criteria of Control Board of the Canadian Institute of Chartered Accountants, *Guidance for Director Governance Processes for Control*(1995).

38 WCB Background Paper on Governance, August 31, 2001, at p. 9. These characteristics were developed by the Canadian Comprehensive Auditing Foundation, whose publications are available at http://www.ccaf-fcvi.com/html/english/visitors/publications/index.html.

39 There were 11 legislative amendments in the 1920's, over 9 in the 1930's, 11 in the 1940's, 10 in the 1950's, 8 in the 1960's, 9 in the 1970's, 5 in the 1980's . See Workers' Compensation in Nova Scotia: A Legal History (Kelly Sample) p.56. In the 1990's there were 3 legislative amendments.

40 See eg. *An Act to Provide Payment of Compensation Under the Workman's Compensation Act to the Widow and Children of the Late Alexander S. McDonald, of Port Hood, Inverness County*, S.N.S. 1923, c.12; *An Act Relating to Francis Graham*, SNS 1929, c. 9; *An Act to Provide for the Payment of Compensation under the Workmen's Compensation Act to the Dependants of Herman Heinekamp, late of New Waterford, Cape Breton County, Nova Scotia*, S.N.S.1930, c.13; *An Act to Provide for the Payment of Compensation under the Workmen's Compensation Act to Francis Graham, of Sydney Mines, Cape Breton County, Nova Scotia*,S.N.S.1930, c.14; etc. in Workers' Compensation in Nova Scotia: A Legal History (Kelly Sample) at pp. 30-31. See also *An Act Respecting the Sinking of the Dredge "Ferguson"*, S.N.S. 1929, c.11 noted in Workers' Compensation in Nova Scotia: A Legal History (Kelly Sample) at p. 31.

41 *Workmen's Compensation Act*, S.N.S. 1931, c.41, s.2 ; *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 187. See also *Hubley v. WCB* (1992) 11 NSR (2d) 295 (NSCA).

42 *Workman's Compensation Act*, S.N.S. 1915, c.1; and *Workmens' Compensation Act*, S.N.S. 1968, c.65.

43 *Workmen's Compensation Act*, S.N.S. 1976, c.36, s.1.

44 *See* Appendix D, Chronology of Reviews.

45 *Worker's Compensation Act*, S.N.S. 1999, c.1.

46 See Summary of Benefit Changes, Appendix K.

47 *Workers' Compensation Act*. S.N.S. 1994-95, c.10, s.151, s. 238, and s. 262.

48 Workers' Compensation General Regulations, OIC 96-59 (January 31,1996) NS Reg. 22/96.

49 Workers' Compensation Supplementary Benefit Regulations, OIC 95-412 (May 23,1995) NS Reg. 77/95.

50 For example, the Government released Workers' Compensation in Nova Scotia, Proposals for Reform: A Discussion Paper, October 6, 1994.

51 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.160A.

52 *Workers' Compensation Act*. S.N.S. 1994-95, c.10, s. 160, s.257, and s.268.

53 In June 1998, the Executive Council requested a review be done of the three organizations by the Auditor General. See Annual Report of the Auditor General, 1998, p.183. *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.177(2). Auditor General Act, R.S.N.S. c.28, s.15.

54 See Appendix D for the Chronology of Reviews.

55 *Government Restructuring (2001) Act*, S.N.S. 2001, c. 4, s. 10(1)(b).

56 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.2(t).

57 *Government Restructuring (2001) Act*, S.N.S. 2001, c. 4, s 38 (c).

58 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 2(t).

59 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.262(1).

60 Justice Richard noted that there must be "recognition of the obligation to 'answer for' and take remedial action." Report of the Westray Mine Public Inquiry, November 1997, Volume 2, at p. 520.

61 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.158(2)(a).

62 *Workers' Compensation Act*. S.N.S. 1994-95, c.10, s.184(3).

63 Correspondence from Hon. Jay Abbass to Dr. Robert Elgie, March 20, 1995.

64 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.270(2).

65 *Workmen's Compensation Act*, S.N.S. 1957, c. 57, s.1.

66 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.274.

67 Workers Advisers Program Regulations, OIC 96-902 (December 10, 1996) NS Reg. 174/96. *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 84.

68 The Chief Workers Adviser will do a second opinion or have another workers adviser do a second opinion if a worker is not satisfied with the opinion of counsel. There were no formal requests for second opinions in 2000. E-mail from WAP, January 3, 2002.

69 WAP Submission to the Workers' Compensation Review Committee, October 17, 2001, pp.14-15. At the Court of Appeal, WAP has represented workers in half of the 174 appeals filed over the past 6 years. The majority of its work is done at the WCAT level.

70 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.269(2).

71 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.262(3).

72 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 262(2)

73 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss.274(a) and 267.

74 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.263(b).

75 E-mail from Workers Advisers Program, Chief Adviser dated October 11, 2001.

76 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.269(1).

77 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.268.

78 Annual Report of the Chief Workers Adviser, 2001

79 See Fig. 3.14 in Chapter 3.

80 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.269(1)

81 Annual Report of the Chief Workers Adviser, 2001, at p.8.

82 WAP Manual and Public Service Performance Management System, Management Manual 500, c.9.

83 WAP e-mail dated January 3, 2002.

84 Report of the Select Committee on the *Workers' Compensation Act* (November, 1998) p.12.

85 Report of the Select Committee on the *Workers' Compensation Act* (November, 1998) p.12.

86 See *Workers' Compensation Act*, SNS 1999, c.1. See Bill 90 at Third Reading at http://www.gov.ns.ca/legi/legc/.

87 Section 272 states: "The Minister may, on such terms and conditions as the Minister deems appropriate or the Governor in Council prescribes, (a) designate any trade union, association of trade unions or other worker association as an organization authorized to provide advice, assistance and representation to workers as part of the Program under the general supervision and direction of the Chief Worker Adviser; and (b) provide funding to any organization designated pursuant to clause (a) from the budget of the Program."

88 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.274(1)(c).

89 *Workers' Compensation Act*, SNS 1994-95, c. 10, s. 162.

90 Letter from Mary Lloyd, President of the Pictou County Injured Workers Association, dated August 1, 2000 indicated that their group declined as they felt issues of training and funding for injured worker's advocates should be considered after other serious concerns and problems are addressed and corrected.

91 Letter from Acting WCB Chair Oscar Wong, WCB dated November 13, 2001 and Feasibility Assessment, A System to Train, Certify and Regulate Individuals from Injured Worker Associations (Landry and Associates) October 11, 2001.

92 Pictou County Injured Workers' Association; Cape Breton Injured Workers' Association; Nova Scotia Provincial Injured Workers' Association; Collaborating Injured Workers for Adequate Rehabilitation; Network of Injured Workers.

93 Report of the Select Committee on the Workers' Compensation Act (November 26, 1998) p.18.

94 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 274 (1) (f).

95 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, Part II, s. 238. The Workers' Compensation Transitional Appeal Regulations, OIC 95-411 (May 23, 1995) NS Reg. 76/95 set out the framework for the new Tribunal.

96 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 243 (1).

97 *Cherubini v. Workers' Compensation Board (NS) et al.*, 2001 NSCA 81.

98 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 199, and see also WCAT Decision 96-025-AD.

99 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 183 (5) and (5A).

100 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 238A.

101 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, ss. 238 (4) and (6).

102 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 238 (5).

103 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 243 (1).

104 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 253.

105 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 252A.

106 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.243 (2).

107 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 245 (1) (c).

108 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 240.

109 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 255 and s.255A.

110 WCAT Submission on Terms of Reference Numbers 1 and 20, October 18, 2001, at p.44.

111 The Workers' Compensation Appeal Board existed from 1993 to 1995

112 Annual Report of the Auditor General, 1998, at p. 188. See also Workers' Compensation Appeal Board of Nova Scotia First Status Report, November, 1994 and Compendium of Workers' Compensation Appeal Board Decisions, 1993-95.

113 WCAT Annual Report, 1998, p.16-17.

114 Workers Compensation Appeal Tribunal Alternative Dispute Resolution Regulations, OIC 1998-682 (December 18, 1998), NS Reg. 105/98.

115 WCAT Annual Report, 2000, at p. 25.

116 WCAT Final Report on the ADR Program, Annette Boucher, (February 28, 2000).

117 WCAT Decision Documents dated April 14, 1998 and November 2, 1999; see also WCAT Background Paper on Terms of Reference Numbers 1 and 20, dated October 18, 2001.

118 WCAT Performance Management Program.

119 See Appendix J and chapter 8 for WCAT Statistics.

120 WCAT Submission on Terms of Reference Numbers 1 and 20, October 18, 2001, at p.4

121 See WCAT Annual Reports, 1996-2001, some of which are available on-line at http://www.gov.ns.ca/wcat/pubs.htm#reports

122 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s.256

123 *Workers' Compensation Act*, S.N.S. 1994-95, c.10, s. 206

124 *Workers' Compensation Board v. Weagle et al* (1998) 170 N.S.R. (2d) 354.

125 E-mails from the Workers Advisers Program, October 25, 2001 and Jan. 12, 2002. A recent decision stated that GECA cases do not come under the appeal provisions of the *Workers' Compensation Act* but, instead, come under the Supreme Court of Canada power of judicial review.

126 *Ombudsman Act*, R.S.N.S. c.327.

127 Memo from the Ombudsman's Office, dated November 8, 2001.

128 Annual Report of the Auditor General, 1998, at p. 200.

129 WAP Submission dated October 17, 2001, at p.2.

130 WCAT Submission dated October 18, 2001, at p.6.

131 Annual Report of the Auditor General, 1998, at p. 204.

132 See also Report of the Select Committee on the *Workers' Compensation Act* (November, 1998) at p.28.

133 Workers' Compensation Review Committee Meeting, July 20, 2001

134 WCB Corporate Performance Measures Advisory Committee, Final Report of the Committee, April, 2001. Betty Jean Sutherland and Carol MacCulloch were members of the Committee. The Labour representatives (Betty Jean Sutherland and Colin Beaton) withdrew prior to the completion of the Final Report as it was not clear what purpose the measures would be used for, and what inputs would be accepted from WCB staff. For a detailed look at the board's performance measures and satisfaction ratings see http://www.wcb.ns.ca under library.

135 WCB Corporate Performance Measures Advisory Committee, Final Report of the Committee, April, 2001, at p.1.

136 Memo from WCAT dated January 4, 2002.

137 KPMG Cost Drivers Study, August 5,1998, at pp. 2 and 13. See http://www.wcb.ns.ca/

138 The Association of Workers' Compensation Boards of Canada (AWCBC) is an association set up by the provincial WCBs to provide research and comparative data for the provincial and territorial boards across Canada. This figure may vary from a low of $0.28 in New Brunswick to a high of $1.04 in the Yukon in 1999. See http://www.gov.ns.ca/enla/wcrc/wcrcpubs.htm

139 AWCBC Key Statistical Measures, provided by the Workers' Compensation Board on August 1, 2001.

140 1999 data from the AWCBC Newsletter, October 2000, at p.11.

141 Based on 1999 data from the AWCBC Newsletter, October 2000, at p. 11.

142 Internal appeal cost provided by WCBs for 1999 in response to an informal survey by the N.S. WCB.

143 External appeal cost provided by WCBs for 1999 in response to an informal survey by the N.S. WCB.

144 Workers' adviser/advocates costs provided by adviser/advocate programs for 1999 in response to an informal survey by the N.S. WCB.

145 Cost of both internal levels combined.

146 James A. Hanway, K.C., William D. Forrest and William D. Cunningham, *Report of Workmen's Compensation Commission*(1937, Kings Printer), p. 18.

147 D. Steuwe, Independent Public Agency Governance A Case Study Of Two Approaches To Reform The Workers' Compensation Board of Nova Scotia (OECD Meeting) April, 2001.